

**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 Republic of Yemen**

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

Dear Chairman Sabloff and Members of the Cultural Property Advisory Committee to the President:

The Committee for Cultural Policy (CCP)<sup>1</sup> 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 deplores 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.

Global Heritage Alliance (GHA)<sup>2</sup> 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 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 Republic of Yemen.

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<sup>1</sup> The Committee for Cultural Policy, POB 4881, Santa Fe, NM 87502. [www.culturalpropertynews.org](http://www.culturalpropertynews.org), [info@culturalpropertynews.org](mailto:info@culturalpropertynews.org).

<sup>2</sup> The Global Heritage Alliance. 1015 18<sup>th</sup> Street. N.W. Suite 204, Washington, D.C. 20036. <http://global-heritage.org/>

## **Arguments for Granting an MOU to Yemen Are Largely Based Upon Misrepresentations of the Data and the Real Situation in Yemen**

We have set forth examples below of a several-years-long campaign by interest groups that is characterized by misrepresentations about illicit trafficking and wild exaggerations regarding the size of a U.S. market, when there is no U.S. market for objects looted from Yemen. These arguments skirt key issues and deflect blame rather than acknowledging what the archaeologists and press cited below have reported: that a U.S. ally is in fact responsible for the majority of the damage to Yemeni monuments and museums. An important fact obscured by the Public Summary, is that indirectly, even if unwillingly, the U.S. government shares responsibility for the ongoing cultural devastation.<sup>3</sup>

It is hardly possible to exaggerate the suffering of the Yemeni people today. In September 2018, the International Red Cross said there had been 1800 airstrikes in the four-year long war, equivalent to one every 99 minutes, and that one third of the targets were civilian.<sup>4</sup> Civilian deaths in Yemen have surged since the June 2018 Saudi-led offensive. Targeting civilian sites also means destruction of heritage in Yemen, a country where ancient architectural traditions had previously been preserved.

Today, the situation has grown even worse. Not only have terrorist groups and other non-state actors deliberately demolished many monuments and homes, but outside government forces, notably Saudi Arabia, have targeted civilian and historic sites in Sana'a and other areas of Yemen.

The suffering of the Yemenite people will not be ameliorated, and their monuments will not be protected by an MOU with the United States that would be nothing but a cover-up. An MOU that blocked access to Yemenite antiquities and ethnographic material would create difficulties for importers of Yemenite material that has long since been outside of Yemen. It would block access to their own cultural heritage by dispossessed and exiled Yemenite minorities, but it could not halt a supposed situation of illicit trafficking to the U.S. that does not in fact exist.

## **Accepting 'Bad Facts' as Real Would Undermine the Legitimacy of CPAC's Recommendation, and Harm the Public's Interest**

The present and future interests of the United States are not served when CPAC's actions are justified by arguments such as 'It's the right thing to do,' or 'Isn't it better to do something than to do nothing?' when 'the right thing' or 'doing something' is both meaningless and contrary to law. For CPAC to take a purely symbolic step would harm the interests of religious minorities from MENA countries and grant yet another MENA nation the ownership and control of the history of a people it has demeaned.

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<sup>3</sup> Lamya Khalidi, *Yemeni Heritage, Saudi Vandalism*, New York Times, June 26, 2015, <https://www.nytimes.com/2015/06/27/opinion/yemeni-heritage-saudi-vandalism.html>

<sup>4</sup> Peter Beaumont, Huge spike in Yemen violence as civilian deaths rise by 164% in four months, The Guardian, September 26, 2018, <https://www.theguardian.com/global-development/2018/sep/26/huge-spike-in-yemen-violence-as-civilian-deaths-rise-by-164-in-four-months-hodeidah>

Nor should justice be denied through a ‘bad’ process. Key U.S. stakeholders, including museum organizations, heritage associations, art collectors and religious communities, especially religious minorities who have been persecuted and forced out of Yemen, have once again been denied a real opportunity to voice their concerns about the proposed Yemen MOU.

In 2017, in its request for commentary on an MOU from Libya, the Department of State effectively excluded important stakeholders from being heard by providing a comment period of less than two weeks (which included the 4<sup>th</sup> of July weekend). At that time, representatives of the Bureau of Educational and Cultural Affairs assured members of the public that this would not happen again. However, it has.

The current Yemen request allowed only two weeks for comment and these two weeks included both a federal holiday and the Jewish High Holiday of Yom Kippur. This rushed scheduling has harmed the ability of museums and minority communities to consult with their members and to provide a full and considered response. Only one hour is allowed for public comment, and five minutes maximum to speak. Allowing only two weeks for written testimony to be submitted makes a mockery of claims that CPAC listens to the public.

The State Department cannot claim that it is unaware of the specific concerns of the Jewish community for whom this scheduling is especially difficult, since eighteen Jewish organizations have raised concerns about overbroad and legally untenable cultural property agreements granted to MENA countries in a December 8, 2018 letter to Secretary Pompeo.<sup>5</sup>

### **The Department of State Has Failed to Provide an Adequate – or Accurate – Summary of the Yemen Request**

The conflict in Yemen is longstanding, and the Yemen Summary avoids mentioning that much of the destruction of cultural heritage in Yemen is the result of bombing by the U.S.’s Saudi allies, even when citing specifically to destruction of a museum where the Saudis are unquestionably culpable. These facts also argue for a more considered and constructive discussion, not a rush to action. Precipitate action will not preserve Yemeni heritage, only disguise some embarrassing reasons for its loss.

The Yemen request fails to include information required to show that the statutory criteria are met. Both the Committee for Cultural Policy and Global Heritage Alliance support the Congressionally mandated application of the 1983 Cultural Property Implementation Act (CPIA).<sup>6</sup> However, both object strongly to the State Department’s failure to publish a complete text of the request; a publicly available statement of the evidence meeting the statutory requirements is necessary in order to determine whether the request actually meets the criteria set by Congress in the CPIA.

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<sup>5</sup> *Letter to Secretary of State Mike Pompeo Regarding Cultural Property Agreements*, Jimena, December 9, 2018, <http://www.jimena.org/letter-to-secretary-of-state-mike-pompeo-regarding-cultural-property-agreements/>

<sup>6</sup> The Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601, *et seq.*

Based upon the U.S. Department of State's "Public Summary", the Yemen Request fails to provide sufficient information on current looting or other threats to heritage in order to meet any of the statutory requirements of the Cultural Property Implementation Act.

**The Yemen Request is Both Vague and Excessively Broad: It Does Not State Whether it is an Emergency Request, and It Applies to All Antiques and Antiquities from Prehistory to 1750 C.E. and Ethnological Material to 1918**

The Cultural Property Implementation Act ("CPIA") constrains the Executive's authority to impose import restrictions on archaeological and ethnological objects. The Executive is required to seek the recommendation and advice of the Cultural Property Advisory Committee and public input is to be taken. Yet the Public Summary of the Yemen Request fails to state even whether Yemen is making a "regular" request under pursuant to 19 U.S.C. § 2602 or "emergency" request pursuant to 19 U.S.C. § 2602(e), and CPAC must make different findings under the law, according to what type of request is being considered.

The first determination that must be met under the CPIA is that the cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party. This necessarily requires that Yemen must demonstrate that each type of item for which import restrictions are sought is in jeopardy of pillage.

The Public Summary of the Yemen Request states that Yemen is seeking import restrictions on: "archaeological material including fragments of monumental architecture, statues and other sculptures, inscriptions, vessels and containers, coins, stamps and ring seals, accessories and tools, ornaments, weapons, jewelry, and human remains. Protection is sought for ethnological material in stone, metal, ceramic and clay, wood, bone and ivory, glass, beads, textiles, and leather and parchment."

The Public Summary of the Yemen Request states that Yemen is seeking import restrictions on "archaeological material dating from the prehistoric periods through the Ottoman Era (up to 1750 CE) and on its ethnological material dating from 1517 to 1918 CE."

This is literally everything ever made in Yemen. Neither the public summary nor any other available source shows that the entire production of the people living in Yemen from prehistoric times to the present is in jeopardy of pillage. These blanket restrictions on objects, which are neither threatened by looting nor demonstrated to be illicitly trafficked in the U.S. were never contemplated by Congress, either in the legislation or in the Congressional hearings on the CPIA.

On the contrary, Professor James Fitzpatrick, an expert on cultural property law who was personally involved in the negotiations in Congress that resulted in passage of the CPIA, has noted,

“...On their face, wall-to-wall embargoes fly in the face of Congress’ intent.<sup>7</sup> Congress spoke of archeological objects as limited to “a narrow range of objects...”<sup>8</sup> Import controls would be applied to “objects of significantly rare archeological stature...As for ethnological objects, the Senate Committee said it did not intend import controls to extend to trinkets or to other objects that are common or repetitive or essentially alike in material, design, color or other outstanding characteristics with other objects of the same type...”<sup>9</sup>”

The Yemen request is just such a proposed wall-to-wall embargo, extending far beyond the range of import controls contemplated in the CPIA.

### **The Yemen Request Fails to Show that Any Illegal Trafficking in the U.S. Has Taken Place**

Another measure of whether an MOU with the U.S. would reduce the jeopardy of pillage is whether there is a market in pillaged material in the state that would impose import restrictions. This goes to the third determination, of whether “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.”

Nowhere in the Yemen Request is there a single example of an unlawful U.S. import or an imported object deemed to be looted. The Public Summary’s statements regarding objects for sale from Yemen are disingenuous and can easily be shown to be mistaken, a repetition of erroneous statements appearing in the media.

The only significant sales of imported Yemeni artifacts in the last decade, are of objects collected long before the war began in 2015. The most valuable U.S. sales by far in the last decade came from Jewish libraries in Europe, including two Hebrew Bibles sold at Sotheby’s in 2015 from the Valmadonna collection in the UK, the finest private collection of Hebrew books and manuscripts in the world.<sup>10</sup>

The only other antiquities originating in Yemen for which there has been a market are the stone (and very rarely bronze) sculptures known as “South Arabian,” some of which originated in South Arabian lands that are presently part of the territory of the modern nation of Yemen, and others originated in present day Saudi Arabia. A summary of the auction sales for both Sotheby’s and Christie’s is linked. Four objects in ten years were sold at Sotheby’s New York, one in 2009, three in 2015, that is, before the war.<sup>11</sup> Thirty-two sculptures were sold at Christie’s, almost all in

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<sup>7</sup> James F. Fitzpatrick, *Falling Short – the Failures in the Administration of the 1983 Cultural Property Law*, 2 ABA Sec. Int’l L. 24, 24 (Panel: International Trade in Ancient Art and Archeological Objects Spring Meeting, New York City, Apr. 15, 2010).

<sup>8</sup> See Senate Report No. 564, 97<sup>th</sup> Cong., 2<sup>nd</sup> Sess. at 4 (1982)

<sup>9</sup> See Senate Report No. 564, 97<sup>th</sup> Cong., 2<sup>nd</sup> Sess. at 6 (1982)

<sup>10</sup> The Valmadonna Trust Library Collection, <https://www.sothebys.com/en/slideshows/the-valmadonna-trust-library>

<sup>11</sup> *Sotheby’s All Sales of South Arabian (Yemen) Ancient Art 2009-2018*, Cultural Property News, January 15, 2019, <https://culturalpropertynews.org/wp-content/uploads/2019/02/2019-01-15-Sothebys-All-Sales-of-South-Arabian-Art.pdf>

2009 and 2010, the last one in 2014, again, before the Yemen war began, and most from much older collections.<sup>12</sup> The very limited art market for Yemeni antiquities is not interested in objects that might be looted. A complete listing of all the Sotheby's and Christies auction sales of Yemenite material may be found at these links:

- <https://culturalpropertynews.org/wp-content/uploads/2019/02/2019-01-15-Sothebys-All-Sales-of-South-Arabian-Art.pdf>
- <https://culturalpropertynews.org/wp-content/uploads/2019/02/2019-01-15-Christies-All-Sales-of-South-Arabian-Art.pdf>

Virtually the only ethnographic-type objects available in the U.S. and European markets of any value are the silver and base metal bead ornaments made almost exclusively by Jewish craftsmen and traditionally worn by Jewish brides.<sup>13</sup> These beads and ornaments are generally sold in the U.S. for silver weight, no more. They may be identified as country-of-origin Yemen in U.S. Customs records, as is proper, but they most often come from Israel, to which most Yemeni Jews emigrated, or are already in circulation from the popular U.S. bead market of the 1970s and 1980s where they could be found in every trade show, legally exported from Yemen at that time.

### **The Yemen Request Does Not Establish That There Is A U.S. Market For Yemen Artifacts**

The Public Summary and public commentary fails to show that the United States is a significant market for recently looted Yemeni antiquities. In fact, it fails to show that there is any significant market today for recently looted Yemen antiquities in any country. Any such claim is belied by the Sotheby's and Christie's records noted above. There is no indication whatsoever that U.S. import restrictions will have a significant effect in preventing current looting in Yemen.

Section 303(a)(1)(C) of the CPIA states that U.S. import restrictions may be implemented only if:

*“the application of the import restrictions set forth in section 307 with respect to archaeological or ethnological material of the State Party, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage...)”*

Yemen has failed to satisfy this required third determination.

### **CPAC Should Beware of Misleading Claims by the Government of Yemen and the Antiquities Coalition**

In conjunction with the recommendation that CPAC examine the data before deciding that there is illicit material coming into the U.S., it is important to note that an influential Washington, D.C.

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<sup>12</sup> *Christie's All Sales of South Arabian Art 2009-2018*, Cultural Property News, January 15, 2019, <https://culturalpropertynews.org/wp-content/uploads/2019/02/2019-01-15-Christies-All-Sales-of-South-Arabian-Art.pdf>

<sup>13</sup> Ester Muchawsky-Schnapper, *The Yemenites: Two Thousand Years of Jewish Culture*, Israel Museum, Jerusalem (2000), p 113.

organization, the Antiquities Coalition, which urges an across-the board expansion of blockades on U.S. imports of Middle Eastern and North African art, has offered many misleading statements regarding a supposed trade and its links to terrorism. A few recent statements regarding Yemen are listed below.

In an opinion piece for the Washington Post on January 1, 2019<sup>14</sup>, Deborah Lehr of the Antiquities Coalition and Ahmed Awad Bin Mubarak, former permanent representative of Yemen to the UN wrote:

*“There is good reason to believe that the United States is a destination for pillaged Yemeni artifacts, because it remains the largest art market in the world. Research by the Antiquities Coalition demonstrates that, over the past decade, the United States has imported more than \$8 million worth of declared art and antiquities from Yemen. There is reason to suspect that the total is much higher. While it is impossible to know the true scale of the illicit trade, it is distressingly familiar, as plunderers across the region have seen museums and ancient sites as opportunities to raise easy money.”*

**Fact:** According to U.S. Customs data, since 2013, the United States has imported \$703,495 of antique, ancient, and ethnographic objects that originated in Yemen. This number includes imports from Europe and Israel of Yemeni origin. See the Standard Report below:

Standard Report - Imports-1

Standard Report - Imports											
Current date: 01/11/2019 1:40 AM (Eastern Standard Time)											
Measures: Customs Value (Gen) (\$US)											
Country	Yemen										
Time	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018 through October	
Commodity											
9705 Collectors Items Of Botanic, Histor Etc Interest					6,000	296,245	50,000		5,005		
9705000060 Numismatic (collectors') Coins, Except Gold (x)						20,000	50,000				
9705000070 Archaeological, Historical Or Ethnographic Pieces (x)						276,245					
9705000075 Archaeological Pieces Desc In Stat Note 1 To Ch (kg)											
9705000080 Ethnographic Pieces Descr In Stat Note 1 To Ch (kg)											
9705000090 Collections & Cllctrs' Pcs Of Int, Exc Numismatic (x)											

The only way to get a number close to \$8 million is to count all imports of goods from art to antiques to postage stamps under Harmonized Tariff Code 41320. That number would include all such goods that originally came from Yemen at any point in history, and that entered the U.S. from any country from 2008 onward. Moreover, the total under this classification drops to \$1.3 million for the last five years, and during the last two years the total was only a tenth of that. Shrinking numbers are not evidence of a growing problem or a need for emergency restrictions. (See below how the U.S. Customs ‘country of origin’ import documentation works and why this number pertains primarily to importation of antique goods from Europe.)

<sup>14</sup> The US art market for stolen antiquities from Yemen must be shut down, The Washington Post, January 1, 2019, [https://www.washingtonpost.com/opinions/the-us-art-market-for-stolen-antiquities-from-yemen-must-be-shut-down/2019/01/01/c3df44aa-db9d-11e8-85df-7a6b4d25cfbb\\_story.html](https://www.washingtonpost.com/opinions/the-us-art-market-for-stolen-antiquities-from-yemen-must-be-shut-down/2019/01/01/c3df44aa-db9d-11e8-85df-7a6b4d25cfbb_story.html)

**Statement** by Deborah Lehr in NPR interview, January 6, 2019:<sup>15</sup>

*“We have evidence of al-Qaida raids on some of the museums in Yemen and we have evidence in Europe, even in Brussels, of dealers who have been selling al-Qaida Yemen’s sponsored antiquities... There’s definite evidence of ISIS benefitting. In a special forces raid of one of the complexes of essentially the person who was the chief financial officer of ISIS, we found receipts of about \$5 million worth of antiquities over the course of a year that they had sold.”* (starting at :2.15)

**Fact:** Wrong country, wrong numbers. The supposed evidence of ISIS benefitting was from a special forces raid in **Syria, not Yemen**, and was incorrectly used to claim, with respect to Syria, that ISIS was garnering huge profits from antiquities. Documents acquired by U.S. Special Forces in the May 2015 raid of Abu Sayyaf’s hiding place demonstrated that the only primary source documents “put the figures at around \$4m a year and that includes money from mineral and metal extraction.”<sup>16</sup> (See also, *Bearing False Witness: The Media, ISIS, and Antiquities*, Cultural Property News, December 1, 2017.<sup>17</sup>) These claims triggered another alarmist chorus in the press and in Congressional offices, despite their obvious factual flaws.

**Statement by Lehr on how many antiquities have left Yemen** in NPR interview (audio at 0.55), January 6, 2019<sup>18</sup>:

*“It was one of the centers of the spice and incense trade and in fact developed [as] the Manhattan of the desert, as a major trading center, with the first skyscrapers of the 16th century, and one of the first major dams in the 8th century B.C. All of these have been targeted for destruction and we’re losing significant amounts of what was really very rich history to these thieves.”*

**Fact:** The Marib Dam was not destroyed by looting. Saudi Arabian forces bombed and destroyed the ancient Marib Dam in 2015.

**Statement:** from Lehr and Awad Bin Mubarak in the Washington Post, January 1, 2019:<sup>19</sup>

*“Three major museums — the Taiz National Museum, the Aden National Museum and the National Museum of Zinjibar — have been pillaged and largely cleared of their collections.”*

**1:** Incorrect, the Taiz National Museum was not pillaged. The museum’s contents were destroyed, burning for two days after Houthi rocket shelling.<sup>20</sup> Local fighters had been leaving

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<sup>15</sup> Yemen’s Loss of Antiquities is ‘Robbing Them of Their Future, NPR, January 6, 2019,

<https://www.npr.org/2019/01/06/682532244/yemens-loss-of-antiquities-is-robbing-them-of-their-future>

<sup>16</sup> Russian claims of ISIS profits from looted antiquities ‘do not add up,’ dealer body says, *Antiques Trade Gazette*, April 8, 2016, <https://www.antiquetrade gazette.com/news/2016/doubt-over-isis-sales-of-looted-items/>

<sup>17</sup> *Bearing False Witness: The Media, ISIS, and Antiquities*, Cultural Property News, December 1, 2017 <https://culturalpropertynews.org/wp-content/uploads/2017/12/CCP-Bearing-False-Witness-The-Media-ISIS-and-Antiquities-1.pdf>

<sup>18</sup> Yemen’s Loss of Antiquities is ‘Robbing Them of Their Future, NPR, January 6, 2019,

<https://www.npr.org/templates/transcript/transcript.php?storyId=682532244>

<sup>19</sup> The US art market for stolen antiquities from Yemen must be shut down, *The Washington Post*, January 1, 2019, [https://www.washingtonpost.com/opinions/the-us-art-market-for-stolen-antiquities-from-yemen-must-be-shut-down/2019/01/01/c3df44aa-db9d-11e8-85df-7a6b4d25cfbb\\_story.html](https://www.washingtonpost.com/opinions/the-us-art-market-for-stolen-antiquities-from-yemen-must-be-shut-down/2019/01/01/c3df44aa-db9d-11e8-85df-7a6b4d25cfbb_story.html)

<sup>20</sup> Henri Neuendorf, *Taiz National Museum Destroyed in Yemeni Civil War*, *Artnet news*, February 4, 2016,



their military vehicles in the museum compound; both sides blamed each other for triggering the attack. It held primarily Islamic manuscripts and antiques.

**2:** We can find no mention of pillaging or an attack on the National Museum of Aden. However, by August 2017, the Aden Military Museum (once a Jewish children’s school) had been damaged in fighting that drove the Houthis from Aden. The National Museum of Aden<sup>21</sup> is a different museum located in a colonial building, the Qasr al-Sultan. The Aden National Museum’s collections are described by the CSAI project: “Unfortunately, after the civil war in 1994, many of these objects got lost, stolen or destroyed.”

This museum’s remaining ancient assets are documented in detail. The CSAI project<sup>22</sup>, a joint Italian -Yemeni documentation project, photographed and recorded 195 inscribed objects from the collection between 2006-2009.

The Aden museum also held the collection of Kaiky Muncherjee, a rich Indian trader living in Aden, who collected all kinds of antiques and knickknacks in the early 20<sup>th</sup> century, as well as a substantial collection of South Arabian statuary.<sup>23</sup> It is described as having many of its objects lost, stolen, or destroyed after the civil war in 1994.

**3:** The National Museum of Zinjibar was looted in 2012, three years before the Yemen war began. It held fifteen ancient objects, all of which are documented in the CSAI database.

**Statement by Deborah Lehr in NPR interview.**<sup>24</sup>

*“They meet with sophisticated middle men and they’re being bought by collectors and others in major Western markets. Some of it is even showing up in the United States. These monies are going back and being used by the Houthis and other terrorist organizations in the region.”*  
(starting at :1.55)

### **Fact: Customs Data Shows No Looted Items in U.S.**

Contrary to claims made by the Antiquities Coalition and others seeking justification for a U.S.-Yemen cultural property agreement, U.S. Customs data shows no evidence for a U.S. market for looted Yemeni goods.

The U.S. Census Bureau is the agency tasked with collating and publishing all data on U.S. imports and exports. Despite the claims of the Antiquities Coalition, what import data tells us is very different. The listing of import data and values by the Census Bureau is based on the Country of Origin, not the country of export. In fact, the U.S. Census Bureau does not publish

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<https://news.artnet.com/art-world/taiz-national-museum-destroyed-419792>

<sup>21</sup> CSAI Collection of Objects from the National Museum of Aden,  
<http://dasi.cnr.it/index.php?id=135&prjId=1&corId=0&colId=13&navId=0>

<sup>22</sup> CSAI Collection of the Objects from the Yemeni Museums,  
<http://dasi.cnr.it/index.php?id=135&prjId=1&corId=0&colId=7&navId=0>

<sup>23</sup> Dr. Noha Sadek, an Egyptian archaeologist who worked for decades in Yemen, informed me that almost all the objects from the Kaiky Muncherjee collection were of foreign, not Yemeni origin. It consisted not of valuable antiquities but was identical to the home décor of wealthy Edwardians of the cuckoo-clock, antimacassar variety. Little remained in Yemen of authentic South Arabian statuary by the early 2000s. Personal communication to Kate Fitz Gibbon from Dr. Noha Sadek. March 8, 2019.

<sup>24</sup> Yemen’s Loss of Antiquities is ‘Robbing Them of Their Future,’ NPR, January 6, 2019,  
<https://www.npr.org/templates/transcript/transcript.php?storyId=682532244> (starting at 1.55).

statistics based on the country of shipment.<sup>25</sup> Thus, an object of Yemeni origin that had been in Europe or Israel for decades would still be reported as from Yemen.

This has multiple effects.

1. Items will be identified as from Yemen in US Census Bureau and Customs trade data even if they have actually been in a third country for many years.
2. It creates an impression of greater numbers of imports from Yemen. For example, by far the most valuable objects from Yemen are Jewish Bibles and religious manuscripts. If a U.S.-Yemen agreement is made under the Cultural Property Implementation Act, community or individually owned objects of Jewish heritage that left Yemen long ago with Jewish owners could be subject to import restrictions, seizure on import, and return to Yemen unless there was proof of export from Yemen dating back a decade or more. Proof of export for many objects is unlikely to be available.

Correlating the import data with the auction sales of Yemeni artifacts imported into the U.S. from European collections, such as the Valmaddona Collection manuscripts, demonstrates that it is unlikely that even the very few U.S. sales of Yemeni origin articles over the last decade were imported directly from Yemen.

### **More Real Numbers**

Other documentation of illegal trafficking from Yemen also shows it to be at a minor level. The World Customs Organization released a 249 page Illicit Trade Report<sup>26</sup> in early February 2018, devoting many of its pages to examining the trade in cultural property – although compared to other forms of illegal trafficking, the cultural property segment was minuscule. A report specifically on Yemen’s illicit cultural property trade stated that Yemen Customs reported five seizures in 2016, resulting in the retention of over 110 individual cultural objects, including coins, statues and calligraphy. The goods were destined for East Africa and Jordan. All the items were in personal luggage stopped at the airport or on their way there, and clearly smaller items. Five seizures of 110 small objects, many of them likely coins, is not evidence of significant smuggling.

### **Yemen Finally Signs 1970 UNESCO Convention**

The proposed blockade of all cultural artifacts from Yemen began as a legislative effort to bypass normal review by CPAC – setting a dangerous precedent that could impact U.S. cultural relations with many other countries. Only UNESCO 1970 signatories can benefit from U.S. import restrictions under the Cultural Property Implementation Act, 19 U.S.C. §§ 2601-2613. In June of 2019, the government of Yemen finally signed the 1970 UNESCO Convention. Yet Yemen’s government has failed to protest the destruction of sites and monuments by its own allies,<sup>27</sup> and this certainly is not mentioned in the Public Summary. The only apparent reason to sign UNESCO now is to enable Yemen to seek a blockade on its art and artifacts though the

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<sup>25</sup> U.S. Customs and Border Protection, Chapter 13 – Country of Origin Marking, <https://www.cbp.gov/trade/nafta/guide-customs-procedures/country-origin-marking>

<sup>26</sup> World Customs Organization, Publications, <http://www.wcoomd.org/en/topics/enforcement-and-compliance/resources/publications.aspx>

<sup>27</sup> *UNESCO Condemns ‘Severe’ Bombing Damage to Sanaa Old Town*, NDTV, May 13, 2015, <https://www.ndtv.com/world-news/unesco-condemns-severe-bombing-damage-to-sanaa-old-town-76261>

Cultural Property Advisory Committee at the U.S. Department of State. Yemen's failure even to protest the destruction in its request should give CPAC pause before acceding to it.

**Rampant Destruction, Not Looting For Sale, is the Problem. And the Majority of the Destruction has been by the Yemeni government's and U.S.'s Saudi Allies.**

The second determination, in the order set forth in the statute, is whether Yemen has taken measures to protect its own cultural patrimony.

Yemen has suffered terrible damage to all of its architectural and monumental heritage during the ongoing conflict.<sup>28</sup> In 2015, the Shia al-Badr and al-Hashoosh mosques in Sana'a were attacked during midday prayers, killing 142 people and wounding more than 350; ISIL claimed responsibility. Museums have also been seriously damaged; the Zinjibar Museum in Abyan Province was looted and is now used as shelter for refugees. In July 2015, the 16th century mosque of Sheikh Abdulhadi al-Sudi in Taz, in southwestern Yemen, was bombed by Salafist gunmen. The mosque was the most famous of Taz's antique buildings, known for its association with Yemen's Sufi tradition. Sufism's mystical teachings are rejected by the ultra-conservative Sunni Salafist movement.<sup>29</sup>

The 2500-year-old Old City of Sana'a has been a UNESCO World Heritage site since 1986. It holds one hundred mosques and thousands of pisé rammed-earth, tower-like houses, many of which are decorated with geometric patterns of fired-brick and white gypsum. This architectural style dates to the 11th century. The Great Mosque of the city was built only six years after the Hijra and was the first mosque outside of Mecca and Medina. Although the government of Yemen mandated the preservation of Sana'a through its Antiquities Law of 1997 and Building Law of 2002, it has long been criticized for failing to preserve the building standards required under the UNESCO designation.



Dhamar Museum Before 2015.  
<https://imgur.com/a/iQwBJ>

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<sup>29</sup> Mwatana for Human Rights: *Destruction of Yemen's History, Civilian Atrocities and Levelling of Monuments*, Cultural Property News, November 26, 2018, <https://culturalpropertynews.org/mwatana-for-human-rights-issues-report-on-yemen/>.



Dhamar Museum After Saudi Airstrikes in 2015. <https://imgur.com/a/iQwBJ>

The Dhamar Museum, a major regional museum that housed over 12,000 artifacts, was blown to bits by Saudi forces in May 2015.<sup>30</sup> A major documentation project by the University of Pisa and Yemen means the records of 700 ancient inscriptions from the museum’s collections are available to scholars online.<sup>31</sup> The director of the documentation project, Alessandra Avanzini, told National Geographic that, “Frankly, when we started the project, I did not imagine that ‘to save’ was to be taken literally.”

The Great Dam of Marib, built by the Sabaeans in 800 BCE, was one of the most important archeological sites in the Arabian Peninsula. In May 2015, it was destroyed by Saudi bombing. In a 2017 article in the Los Angeles Review of Books, Abdulhakim al-Sayaghi, an architect and senior consultant with the Cultural Heritage Unit of the Social Fund for Development, was quoted saying that, “More than 95 percent of [the destroyed] sites have been destroyed by the Saudi-led coalition.”<sup>32</sup>

In an opinion piece for the New York Times in June 2015, archaeologist Lamya Khalida wrote: “The desecration of these archaeological sites and monuments, as well as the architecture and infrastructure of Yemen’s historic cities, can be called only a targeted and systemic destruction of Yemeni world heritage. Yet it has not been named as such... The same obscurantist ideology by which the Islamic State justifies its destruction of cultural heritage sites appears to be driving the Saudis’ air war against the precious physical evidence of Yemen’s ancient civilizations. There is no other explanation for why the Saudi-led offensive should have laid waste to these irreplaceable world archaeological treasures... several sources have confirmed that Unesco and the State Department gave the coalition a list of specific sites to avoid. But far from rebuking its ally for ignoring this advice, the United States is providing<sup>33</sup> logistical, intelligence and moral support for

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<sup>30</sup> Imgur, <https://imgur.com/a/iQwBJ>.

<sup>31</sup> DASI Digital Archive for the Study of Pre-Islamic Arabian Inscriptions, <http://dasi.cnr.it>

<sup>32</sup> Frederick Deknatel, *Tearing the Historic Fabric: The Destruction of Yemen’s Cultural Heritage*, Los Angeles Review of Books, February 21, 2017, <https://lareviewofbooks.org/article/tearing-the-historic-fabric-the-destruction-of-yemens-cultural-heritage/#!>

<sup>33</sup> Micah Zenko, Make No Mistake – the United States Is at War in Yemen, March 30, 2015, <https://foreignpolicy.com/2015/03/30/make-no-mistake-the-united-states-is-at-war-in-yemen-saudi-arabia-iran/>

the Saudi air campaign....This Saudi cultural vandalism is hard to distinguish from the Islamic State's."<sup>34</sup>

The Public Summary of the Yemen Request fails to show that Yemen has taken steps to adequately protect its ancient sites. It has thus failed to satisfy the second statutory determinant required by 19 U.S.C. § 2602(a)(1)(B) that the State Party has taken measures consistent with the 1970 UNESCO Convention to protect its cultural patrimony.

**Red List Identifies Yemen's Rich Jewish Heritage as Yemeni Government Property**  
CPAC should not allow personal possessions and religious objects from victimized minority communities to be claimed and seized by their persecutors.

On January 31, 2018, an Emergency Red List for Yemen was announced at a ceremony at the Metropolitan Museum of Art in New York.<sup>35</sup> The Red List was funded, produced, and published in partnership between the US Department of State's Bureau of Educational and Cultural Affairs and the International Council of Museums (ICOM). The Yemen Red List raised extreme concerns among the Jewish community, and especially among exiled Jews from the Middle East. In issuing a Red List with numbers of objects of Jewish heritage, Yemen asserted its government's ownership and control over the heritage of Jewish peoples that were persecuted and driven to leave *en masse* in the mid-20th century, after the partition of Palestine and creation of a Jewish state in 1947.

The government of Yemen seems very concerned with reclaiming the heritage of its exiled peoples. Jewish (and also Christian) art, artifacts and heirlooms including Torah finials and a medieval Hebrew manuscript are pictured and explicitly included in the items covered by the Red List.

The Red List emphasizes that all cultural items listed are legally the property of the Yemeni government. It references two provisions of Yemen's Law on Antiquities, one of which prohibits the sale of archaeological objects or giving of national cultural heritage objects, whether registered or not, or to transfer cultural property. It is also forbidden to export archaeological or cultural objects or natural samples except for restoration work or temporary loan.

During the 2000 years that Jewish communities lived in Yemen, they experienced violent persecution under some South Arabian rulers, and at other periods were a tolerated and respected element of the region's cultural and economic life. Jews were famed craftsmen, creating some of the earliest sophisticated textiles of the Islamic world, including 10th century silk ikats; they worked in metal of all kinds, and produced inlaid and decorated furniture.

Jewish craftsmen are also famed for carving the traditional Yemeni daggers, but because of sumptuary laws in Yemen were forbidden from wearing them, or from wearing new clothes.

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<sup>34</sup> Lamya Khalidi, *Yemeni Heritage, Saudi Vandalism*, New York Times, June 26, 2015, <https://www.nytimes.com/2015/06/27/opinion/yemeni-heritage-saudi-vandalism.html>

<sup>35</sup> Emergency Red List for Yemen, [https://eca.state.gov/files/bureau/imp\\_light\\_rl\\_yemen\\_en\\_pages.pdf](https://eca.state.gov/files/bureau/imp_light_rl_yemen_en_pages.pdf)

Jews were most famous for making the silver jewelry for which Yemen is renowned. In “*The Yemenites: Two Thousand Years of Jewish Culture*,” author Ester Muchawsky-Schnapper writes that:

*“Making jewelry was an almost exclusively Jewish profession everywhere in Yemen, and even in areas like the Hadramat, where the silversmiths were Muslims, it now appears that many of them were descendants of Jewish converts. In the silver market of Sana’a, for instance, there were up to 300 Jewish silversmiths at a certain time, and in the town of Dhamar one third of all the Jewish craftsmen were silversmiths.”*<sup>36</sup>

There are only 50-some Jews remaining in Yemen. They are persecuted, impoverished, and living hidden lives in fear of both government and rebels, and they have few, if any, objects of value left.

A U.S. cultural property agreement could force return of religious items to the Yemeni government, which claims ownership of all antiques, despite having failed to protect the tiny, terrorized remnant of what was once a flourishing Jewish community. In March 2016, nineteen Yemeni Jews left Yemen in a covert airlift for Israel.<sup>37</sup> They could take nothing from their homes. Their rabbi brought out an 800-year-old leather Torah belonging to their Jewish community. Subsequently, the Yemen government arrested a Jewish man who remained in Yemen and a Muslim airport employee, accusing them of removing government owned artifacts and demanding the Torah’s return.<sup>38</sup>

Avi Mayer of the Jewish Agency told the Jewish Chronicle in March 2016 that, “The notion that the Torah should have been left, without protection, in a country torn apart by a violent civil war involving several parties that are viciously hostile to Jews, is preposterous. The Torah is part of the proud heritage of Yemenite Jewry and that heritage will live on in the state of Israel.”<sup>39</sup>

In the Red List, however, there is no recognition whatsoever that any Jewish community in the diaspora has rights to cultural property; all Jewish cultural heritage is under the authority and control of the government of Yemen, and any items seized by other nations as a result of publication on the Red List should be returned to the government of Yemen.

The U.S. State Department’s Bureau of Educational and Cultural Affairs and ICOM, which funded and assisted in production of this Yemen Red List, have made their position abundantly clear: regardless of the circumstances, regardless of the oppression of minorities, all rights to heritage are vested in national governments only.

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<sup>36</sup> Ester Muchawsky-Schnapper, *The Yemenites: Two Thousand Years of Jewish Culture*, Israel Museum, Jerusalem (2000), p 113. <https://www.amazon.com/Yemenites-Thousand-Jewish-Culture-Catalogue/dp/9652782513>

<sup>37</sup> Shira Rubin, ‘*We have Nothing Left*’: *The Saga of Yemen’s Rescued Jews*, The Daily Beast, <https://www.thedailybeast.com/we-have-nothing-left-the-saga-of-yemens-rescued-jews>

<sup>38</sup> Adam Eliyahu Berkowitz, *Yemen Arrests Jew for Smuggling Ancient Torah to Israel*, March 25, 2016, Jewish Chronicle, <https://www.breakingisraelnews.com/64353/yemen-arrests-jew-for-smuggling-ancient-torah-to-israel-jewish-world/>

<sup>39</sup> *Id.*

## Conclusion

The Public Summary fails to even attempt to provide evidence showing any connection between sales of objects from Yemen and any looting in Yemen. It completely fails to satisfy the determinations required by the Cultural Property Implementation Act that the specific items of cultural patrimony for which import restrictions are sought are in jeopardy from pillage, or that pillaged artifacts are entering the U.S.

Mandatory statutory determinations should be met based on evidence and facts, not speculation. The facts do not meet the criteria required by the Cultural Property Implementation Act to justify an MOU of any kind. The committee is well aware that every one of the statutory criteria must be met in order for the U.S. to implement import restrictions under the Cultural Property Implementation Act.

The last required showing under the CPIA's fourth determination is that 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. Although CPAC has often accepted having travelling exhibitions as meeting an extremely low threshold of what constitutes being in the interest of the interchange of cultural property, Yemen cannot even meet that minimal standard.

It may be understandable that Yemen has not prioritized exhibitions or provided easy access to even its own people to cultural heritage, given that the country is in a state of civil war. But it has never embraced these UNESCO type principles, and in fact, did not sign UNESCO until just a few months prior to making this request. We submit that Yemen only signed UNESCO in order to make this request. Where Yemen has utterly failed is in not acting to preserve and defend its heritage or the heritage of others – only to claim ownership of it. Yemen's actions reflect neither the word nor the spirit of the 1970 UNESCO Convention.

Whatever its messages to CPAC, the Yemeni government's message to its people and to its allies in this war is that it places little value on physical heritage and even less on the rights of its minority peoples to that culture. Like China, and like Egypt, Yemen cannot permit the abuse of human rights, especially minority rights, and be given credit for "preserving heritage" at the same time. One is the antithesis of the other.

For CPAC to impose import restrictions on Yemeni materials when the mandatory requirements of the Cultural Property Implementation Act are not met would amount to ignoring the law. CPAC may not go beyond the law to invent its own mandate. It cannot ignore Congress' fundamental intent - to protect archaeological resources and to deter pillage, while ensuring that U.S. citizens and U.S. museums maintain access to global cultural resources.

Over time, 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 from the prehistoric to the present time from the countries which have sought agreements under the CPIA. By failing to heed the concerns of Congress, CPAC would not only act in derogation of U.S. law, it would lend

support to what Congress feared, an exclusively statist rather than internationalist approach to heritage.

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 the United States' academic, museum, business, and public interests by 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 United States.<sup>40</sup>

As both the Committee for Cultural Policy and the Global Heritage Alliance have stated in the past, and doubtless will have to state again, the Cultural Property Advisory Committee should live by the law that created it. It should apply a plain reading to the four determinations it must make. CPAC can follow the dictates of Congress. It can honor and respect the limitations of the law by not signing Memoranda of Understanding with governments that fail to meet the statutory requirements of the CPIA. It can ensure, by demanding specific language that exempts the heritage of minority peoples, that import restrictions are not imposed in a situation where the facts and the law do not support it.

Thank you very much for your attention. I look forward to speaking with you on October 29, 2019.

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<sup>40</sup> 19 U.S.C. § 2602(a)(1)(A-D) and 19 U.S.C. § 2602(a)(4)