

Committee for Cultural Policy and Global Heritage Alliance

Submission to Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, U.S. Department of State, on the Proposed Extension of the Memorandum of Understanding Between the Government of the United States of America and the Government of Libya Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Libya.

Date of Meeting: July 26, at 2:00-3:00 PM (EST)

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Proposed Renewal of the Memorandum of Understanding with the Government of Libya

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Mr. 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

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

The Committee for Cultural Policy¹ and Global Heritage Alliance² jointly submit this testimony on the extension of the Proposed Memorandum of Understanding (MOU) and the continuing imposition of import restrictions between the United States and the Government of Libya.

¹ The Committee for Cultural Policy, Inc (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 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. The Committee for Cultural Policy, POB 4881, Santa Fe, NM 87502. www.culturalpropertynews.org, info@culturalpropertynews.org.

² Global Heritage Alliance, Inc (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

EXECUTIVE SUMMARY

- **The Libyan agreements of 2017-2018 were hastily executed and legally flawed.**
The first 2017 Libyan MOU was an emergency agreement pushed through the entire public process in two weeks, morphing into a full-fledged MOU within months. The ECA compiled a Designated List that restricted importation of virtually every object from Libya from 12,000 -BC to 1911. Neither process nor results met the standards or the goals of the Cultural Property Implementation Act, the governing law.
- **Libya had no government to uphold an MOU in 2017-2018; it has none now.** The Libyan state is irreconcilably fractured and has been in a state of civil war since the fall of Muammar Ghaddafi in 2011. The prior MOU was signed with a “Government of National Accord” (GNA) that managed only a fraction of Libyan territory. The current “Government of National Unity” (GNU) is equally weak, controlling about one third of Libya.³ The remaining two-thirds of Libya are held by warring factions at odds with both the GNU and each other. A renewed MOU with Libya would be based on the unlikely premise that the GNU could or would act on a national basis to protect and preserve Libyan cultural heritage.
- **Despite US State Department and other international sponsorship of projects to organize heritage management and the urgent desire of Libyan heritage workers to accomplish this task, the protection of heritage inside Libya remain aspirational – something to be accomplished when there is peace, stability, and funding for heritage work.**
- **Libyan archaeological sites and built heritage have deteriorated significantly over the last five years that the MOU has been in place.** The civil war driving the various Libyan factions has continued to damage or destroy its cultural assets and infrastructure. Archeological community reports demonstrate that government indifference, negligence and

artifacts and 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 To make everything perfectly clear, according to Wikipedia, which at least tries to keep up with the situation, “The Government of National Accord was an interim government for Libya that was formed under the terms of the Libyan Political Agreement, a United Nations–led initiative, signed on 17 December 2015.” Subsequently, conflict between two rival parliaments, the Libyan House of Representatives (HOR) and the General National Congress (GNC) ensured that the GNA could not unify even these two elements of the many competing military and political rivals in Libya. Although the UN recognized the GNA as Libya’s legitimate government, it has since failed and been replaced by a new Government of National Unity, that is “a provisional government for Libya formed on 10 March 2021 to unify the rival Government of National Accord based in Tripoli and the Second Al-Thani Cabinet based in Tobruk.” However, all observers except possibly the UN appear to agree that there is still no government capable of exercising even limited authority over the many factions. See *Government of National Accord (Libya)* https://en.wikipedia.org/wiki/Government_of_National_Accord and *Government of National Unity (Libya)*, [https://en.wikipedia.org/wiki/Government_of_National_Unity_\(Libya\)](https://en.wikipedia.org/wiki/Government_of_National_Unity_(Libya)) (last visited July 17, 2022).

lack of funding is the major cause of continuing losses. Libya unable to meet the criteria for self-help required under the CPIA.

- **The current MOU and Designated List support Libyan government claims to the heritage of religious minorities driven from the country. Libya continues to nationalize or destroy the remaining community and private property of Libyan Christians and Jews.**
- **The current MOU and Designated List includes the art and ordinary artifacts of Tuareg and Berber nomadic peoples of the southern Sahara, only a small proportion of whom live in Libya. The Tuareg, who have long suffered racial and ethnic discrimination, now form yet another warring faction in the militias competing for territory and power.**
- **The current Libyan request fails to meet the four key legal criteria set by Congress for import restrictions under the 1983 Cultural Property Implementation Act.**
- **The thefts, destruction, and losses to heritage taking place today in Libya are primarily due to hostilities between competing political factions and to illegal development tolerated by local governments, not to an international market for looted Libyan artifacts.** What market there is in antiquities appears directed within the region, particularly the Middle East.
- **Enactment of all-inclusive MOUs across the Middle East and North Africa are the result of an activist policy at the Department of State, not driven by evidence or the facts required under the law.**
- **Libya is not a valid partner with the United States in the protection of global cultural interests and the human, social, religious, and community rights to cultural heritage that we avow.**
- **What Libya needs is not a renewed MOU. It needs funding for domestic heritage inventories and documentation, salaries for heritage workers, disaster prevention for sites, museums, and archives, and a directed public campaign to explain the importance of history and preservation of heritage to the Libyan people, especially young people.**

COMMENTARY

I. Hasty and legally unjustified initial agreements: the 2017-2018 MOUs.

On Monday July 3, 2017, the State Department’s Cultural Heritage Center published a Notice in the Federal Register of a CPAC meeting to consider a request from the Government of Libya. The public hearing was scheduled for 16 days later. Unless members of the public submitted written comments by July 10th, just 7 days after the Notice was published - including the Fourth of July long weekend – they were not allowed to testify before CPAC on the proposed MOU. (Since that time, CPAC has changed its procedures and it is no longer necessary to submit written comments in order to speak.)

The lack of time for museum, trade or public input on the proposed MOU, the unprecedented breadth of the requested import restrictions compared to previous country requests, and the fact that Libya was in political chaos, split by militant factions and without a functioning government for years, all resulted in an MOU process that made a mockery of the Cultural Property Implementation Act’s statutory criteria for an MOU and its requirement for public input.

The Association of Art Museum Directors’ (AAMD) submission on the proposed 2017 MOU described the timing of the request as “unseemly” and stated that, “vetting it in this abbreviated fashion could compromise ever-important public trust in the Committee and its mission.”⁴

The AAMD noted that the most recent *initial* request made to CPAC, from the Government of Egypt, had taken over two years for consultation and review. The museum organization pointed out that there was clearly no emergency; Libya had admitted the “threats” to its cultural heritage had existed for “at least the last six years and in some instances for decades.”

The AAMD expressed outrage at the breadth of the request, covering “a wide array of archaeological material including “stone, metal, ceramic and clay, glass, faience, and semi-precious stone, mosaic, painting, plaster, textile, basketry, rope, bone, ivory, shell and other organics,” from 12,000 BC to 1750 AD.⁵

The AAMD said this was “nothing short of vast” and that “granting it would strain, if not shatter credulity.” It reminded CPAC that archaeological materials must be of “cultural significance and that ethnological material must have “distinctive characteristics,” be of “comparative rarity” or contribute “to the knowledge of the origins, development, or history.” The scope of the Libyan

⁴ Statement of the Association of Art Museum Directors Concerning the Request from the Government of Libya to the Government of the United States of America under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Association of Art Museum Directors, July 19, 2017, (henceforth AAMD Libya Statement 2017), 1.

⁵ *Id.* at 2.

request, stated the AAMD, “eradicates any notion of protecting only “*culturally significant*”⁶ items”⁷ as set forth in the statute.

CPAC members appointed within the last five years may not realize that the all-encompassing Libyan request represented a major deviation from the first twenty years of the operation of the CPIA and from the law passed by Congress. All-encompassing import restrictions covering virtually all objects over tens of thousands of years are a violation of the spirit, the intent, and the explicit language of the CPIA – yet today there are commonplace.⁸

Now, CPAC members are being asked to violate the standards set by Congress once again by extending the Libyan MOU and its overbroad 2017-2018 Designated Lists. To do so would be to reinforce a policy contrary to the statute and harmful to the public interest.

II. Libya has no government to honor and implement an MOU.

Libya was in chaos in 2017 when emergency restrictions were put in place and it is still in chaos.

Libya has been in a state of civil war since the overthrow of the Ghaddafi government in 2011. Attempts to bring the parties together have failed again and again. In December 2015, a unified government was announced, known as the Government of National Accord (GNA). Within a week, this ‘unified’ government was rejected by General Haftar, who leads the so-called Libyan National Army, backed by the population in eastern Libya. By late 2016, there were three main governments centered around Tripoli, Tobruk in the east and the UNESCO-backed GNA. Part of the south of the country is now controlled by the National Movement for Tuaregs. Smaller militias and interest groups repeatedly align and break apart. Despite claims by various factions that things are settling down, there has been no end to bombardments, with tens of thousands of airstrikes on cities and their surrounds, including near and around major monuments and archaeological sites. A half dozen foreign nations are supplying the different Libyan factions with arms despite an ostensible embargo; the power plays between these nations contribute significantly to the failure to find peace, although many Libyan citizens would accept almost any solution that ended the decade long civil war. Last year, in 2021, the GNA was replaced by another interim Government of National Unity (GNU) created largely through the efforts of the United Nations. The Libyan National Army officially ceded power to the GNU in March 2021, but there is not actual unity or stability; the factions continue to struggle against one another in an endless tug-of-war.

⁶ 19 U.S.C. § 2601(2)(c)(i)(I).

⁷ AAMD Libya Statement 2017, 2

⁸ The Afghanistan Designated List (2022) covers 50,000 BCE to 1920, Albania (2022) 3000,000 BCE to 1913, Algeria (2019) 2.4 million BCE to 1750, Jordan (2020) 1.5 million BCE to 1750, etc.

The US has a more marginal role since the embassy in Tripoli closed in 2014, after the murder of the US Ambassador J. Christopher Stevens and three other Americans on September 11, 2012 at the embassy in Benghazi. The Tripoli embassy continues to operate from Tunis, Tunisia.

The US Department of State, *2021 Trafficking in Persons Report: Libya* paints a frightening portrait of life in Libya today and over the duration of the 2017-2018 MOU:

“Libya is a Special Case for the sixth consecutive year. The Libyan Government of National Accord (GNA) struggled to govern large swaths of Libyan territory, as it did not exercise control in several parts of the country. The judicial system was not fully functioning, as courts in major cities throughout the country have not been operational since 2014. Violence continued during the reporting period due to the conflict between the Tripoli-based GNA and the self-styled Libyan National Army (LNA), which has sought to establish a rival government in eastern Libya. Financial or military contributions from other states in the region further enabled the conflict, with Turkey supporting the GNA and Russia, the United Arab Emirates, and Egypt supporting the LNA, although some military support abated following a nationwide ceasefire signed on October 23, 2020. Extra-legal armed groups continued to fill a security vacuum across the country; such groups varied widely in their make-up and the extent to which they were under the direction of state authorities. These disparate groups committed various human rights abuses, including unlawful killings, forcible recruitment, forced labor, and sex trafficking. Impunity for those committing abuses against civilians was a pervasive problem. During the reporting period, an international organization verified the GNA and GNA-aligned armed groups recruited and used child soldiers; the international organization also verified the LNA and LNA-aligned armed groups recruited and used child soldiers. There were continued reports that criminal networks, militia groups, government officials, and private employers exploited migrants, refugees, and asylum-seekers in sex and labor trafficking. Endemic corruption and militias’ influence over government ministries contributed to the GNA’s inability to effectively address human trafficking.”⁹

III. Archaeological work, preservation, museum activities, inventory management and conservation are at a virtual standstill. Libya’s cultural sector and its two separate Departments of Antiquities cannot operate in a state of civil war in which warring factions consider ‘cultural heritage’ of little account.

Prior to the hearing on the first Libya MOU in 2017, UNESCO and ICCROM organized and the US State Department and US Embassy and the Department of Antiquities of Libya sponsored a

⁹ U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, “2021 Trafficking in Persons Report: Libya,” <https://www.state.gov/reports/2021-trafficking-in-persons-report/libya/>

‘*International Experts Meeting on Safeguarding Libyan Cultural Heritage*’ workshop in Tunis on 9–11 May, 2016. However, as Archaeologist Paul Bennett reported in *Libyan Studies*, the annual journal of the Society for Libyan Studies¹⁰:

“Despite the efforts of UNESCO, ICCROM and others over the past five years, including the Society, to cooperate with Libyan institutions to provide training and support, the worsening situation now requires a wider framework to provide urgent and immediate protection for archaeological sites, even those with World Heritage status, a longer term strategy for cultural heritage generally.”¹¹

The conferees set forth important needs and goals for Libyan cultural heritage. Conference attendees were clear that to meet the crisis, there needed to be inventories done of materials and site documentation, satellite imagery organized for condition assessment, protection and disaster measures put in place for sites, in museums, archives and stores, compilation of a list of missing and stolen artifacts to share with the international community, a national inventory of built heritage created using GIS mapping and satellite imagery, measures taken to fight against illegal encroachments and building in and around sites, against illicit trade, and campaigns to raise awareness of Libyan heritage, particularly for young people.

However, there was virtually no action taken toward achieving these goals, due to the lack of high-level Libyan government support.

Up to today, these all remain aspirational goals. To quote Paul Bennett of the Society for Libyan Studies, “All the outcomes set out above represent the hopes and aspirations of our Libyan colleagues, and we hope with help from the international community, as we move towards peace and good governance in the country, all our colleagues’ aspirations will become a reality.”¹²

Over the last five years during which the MOU has been in place, the various governments have largely ignored these essential goals. Indifference, negligence, and lack of funding have left heritage authorities unable to even begin to take the self-help measures required for a bilateral agreement under the CPIA.

As Bennett notes repeatedly in the annual *Notes from Libya* published in *Libyan Studies* up to 2020, much of the work accomplished in Libya since 2017 has been done by committed local

¹⁰ The Society for Libyan Studies has just been restructured as British Institute for Libyan & Northern African Studies. It is now part of the British International Research Institute, sponsored by the British Academy, located at the School of Archaeology at Oxford University. See: <https://www.arch.ox.ac.uk/article/nick-barton-elected-inaugural-president-british-institute-libyan-and-north-african-studies>.

¹¹ Paul Bennett, *Notes from Libya*, *Libyan Studies* 47 (2016), pp 181–184 © The Society for Libyan Studies doi:10.1017/lis.2016.12 First published online 14 September 2016, <https://doi.org/10.1017/lis.2016.12> Published online by Cambridge University Press.

¹² *Id.*

officials and heritage specialists who command the respect of the communities where sites are located. This has involved clearing brush and removing litter and garbage from World Heritage sites and negotiating with developers intent on building shops right up to the walls of major monuments. One of the most active groups has been the Boy Scouts, an organization whose membership is not limited to youth in Libya, which has organized cleanup and protection campaigns and done much to raise awareness of heritage among local populations. Nonetheless, this volunteer work is inherently limited and no substitute for government action.¹³

IV. Very little has been done in the last five years to preserve heritage. The lack of interest by Libyan government factions and the fighting at and around heritage sites has resulted in serious deterioration and damage to Libyan archaeological sites and built heritage.

Haua Fteah Cave. An archaeological project undertaken in north-east Libya during the period of the MOU involved sifting of tons of soil gathered in excavations from Haua Fteah Cave in Cyrenica. This important site for understanding North African prehistory was originally excavated beginning in 1951. Excavation was made to 14 meters depth; the earliest finds were tiny flake and blade artifacts dating 65,000 to 80,000 years. Training provided in Britain enabled more recent work sieving sediments through flotation and preparation of cave for eventual additional excavation. By 2016 the main hope was to backfill the site to protect it. In 2017, the Society for Libyan Studies was finally able to get 5000 € in funding from the Prince Claus Fund to backfill the site.¹⁴ The site was lined with geotextile and the different layers were shored up. During this work, there was deteriorating security because cave was located close to front lines between the Libyan army and IS. The archaeologists were driven out several times by explosions and gunfire nearby.

Cyrene World Heritage site. In 2015, the Department of Antiquities in Cyrene was unable to prevent escalating illegal development for housing and agricultural land in and around Shahat and even within the World Heritage Site of Cyrene that destroyed significant parts of the ancient Necropolis. The situation around Al-Bayda was reported to be a little better in 2018, “but knowledgeable people are not optimistic at all,” according to archaeologist Paul Bennett. In the Cyrene suburbs, archaeologists reported in 2018 that new buildings had been illegally built within the site of Cyrene and all along the ancient tomb-lined road to Al Baida and in Wadi Belgadir. According to Paul Bennett in 2018, “there is new, uncontrolled and illegal development everywhere” and “all the ancient cemetery sites surrounding Cyrene must now be considered at risk.”¹⁵

¹³ Paul Bennett, *Notes from Libya*, *Libyan Studies* 49 (2018), p 217-218, © The Society for Libyan Studies

¹⁴ Paul Bennet, *Notes from Libya*, *Libyan Studies* 47 (2016), pp 181–184 © The Society for Libyan Studies doi:10.1017/lis.2016.12 First published online 14 September 2016, <https://doi.org/10.1017/lis.2016.12> Published online by Cambridge University Press.

¹⁵ Paul Bennett, *Notes from Libya*, *Libyan Studies* 49 (2018), p 212, © The Society for Libyan Studies

The site controller was able to work with the Benghazi Department of Antiquities (DoA) to remove vegetation from the site and secure some tombs near the highway to prevent vandalism. “Local farmers are now actively discouraged from bringing animals on the site.”¹⁶

Apollonia. A new housing estate constructed 2017-2018 has destroyed the East Fort, a rock cut fortress. Another such fort was also recently destroyed west of the port. The ancient port is now surrounded by housing and sewage is being discharged into the sea, in some cases at the ancient port itself. The ancient natural reef protecting the port has severely deteriorated, weakening the port’s resistance to damage from the sea.¹⁷

Al Baida. Building on the campus of the University of Al Baida exposed a Late Roman building with mosaic pavements. Salvage archaeology was carried out to preserve a record of the building - before it was destroyed.¹⁸

Built heritage of Old Benghazi. The Medina Gadima (Old City) of Benghazi “has been devastated, with parts barely recognizable, being simply a mass of collapsed buildings.”¹⁹ According to Paul Bennett, 40-50,000 families were displaced by the fighting and by 2020, no arrangements had been made to repair the structures or provide alternative housing.²⁰

Sidi Khrebish. “The archaeological site has been badly disturbed by multiple burials of Islamist fighters.”²¹

Tocra. In 2017-2018 “A significant amount of coastal erosion has occurred...with further loss of stratified deposits and building foundations.” “A scheme to fence the site has apparently failed through lack of funds; the intention was to install concrete posts purchased some years ago... the wire was in store ready to be used.”²²

Site of Eusperides. In 2017: “The site has been mined and is a no-go area.”²³ In 2018: Benghazi Football Club or its owners were seeking to develop 140 shops in part of the harbor and Lower City of Esperides. Paul Bennett noted that “...the open ground north of existing high rise flats and south-east of the Football Club, despite extensive piles of domestic and industrial rubbish dumped after 2000, even today retains visible traces of a complex pattern of streets dating back before the mid-third century BC.” After much lobbying by cultural officials, in 2019 the Football

¹⁶ *Id.* at 217.

¹⁷ *Id.* at 216.

¹⁸ *Id.*

¹⁹ *Id.* at 221.

²⁰ *Id.* at 219-220.

²¹ *Id.*

²² *Id.* at 222.

²³ *Id.*

club agreed to modify the plan and fence the adjacent ancient site, building the shops nearby but not on the ancient site itself.²⁴

Training Excavations. Local universities have conducted several short training excavations at Balagrae and Tocra.²⁵ In 2018, the University of Benghazi cancelled a planned training excavation for Libyan students from all universities due to lack of funds; by 2020 some trainings had taken place.²⁶

Ghadames. “Warfare, neglect and recent very bad weather have had a marked effect on parts of the city. A number of co-dependent buildings have collapsed, jeopardizing the stability of adjacent properties.”²⁷ BP funding was denied but was hoped to be re-applied for. In December 2018, the American Ambassador’s Fund was asked for help, but did not provide it.²⁸

Tripoli. In March 2019, the French Archaeological Mission put forward a scheme to restore the National Museum in Tripoli. ALIPH (International Alliance for the Protection of Heritage) funding was sought. ALIPH later agreed to provide some funding for training and restoration at five World Heritage sites, beginning with Ghadames.

V. Libya’s two competing Departments of Antiquities are struggling to function.

Libya not only lacks a government capable of administrative management, or of protecting Libyan materials that would be returned to it as a result of a MOU with the United States. This fracturing of power and authority has resulted in their being two Departments of Antiquities, one in Tripoli and one in Benghazi. UNESCO only recognizes the one in Tripoli. The DoAs have a poor history of working together and are usually at odds. In 2017 archaeologist Paul Bennett stated:

“There is still conflict between the two Departments of Antiquities and the situation between them is not encouraging at all, despite the reality of disintegrating archaeological sites, illegal development everywhere and a growing market in the trafficking of antiquities. Sites are decreasing daily and destruction is everywhere.”²⁹

In 2018, the Department of Antiquities (DoA) in Benghazi operated out of the former Berka Barracks, a large, late Ottoman (late 19-early 20th C) complex made up of “decaying, partially collapsed buildings surrounding a parade ground.” The DoA was formerly in a school building at Sidi Khrebish, but in 2007 “with bulldozers at the site entrance” was forced to remove the most

²⁴ Paul Bennett, *Notes from Libya*, Libyan Studies 50 (2019) p 189, © The Society for Libyan Studies

²⁵ *Id.* at 217.

²⁶ Paul Bennett, *Notes from Libya*, Libyan Studies 50 (2019) p 189, © The Society for Libyan Studies

²⁷ Paul Bennett, *Notes from Libya*, Libyan Studies 49 (2018), at 89.

²⁸ Paul Bennett, *Notes from Libya*, Libyan Studies 50 (2019) p 221

²⁹ Paul Bennett, *Notes from Libya*, Libyan Studies 48 (2017), at 175.

important collections representing stratigraphic finds from mid-3rd C BCE to the 11th C CE to the town of Tobra for safekeeping.³⁰ Other archaeological materials from the Greek city site of Eusperides were taken to the Benghazi municipal ‘House of Culture’. According to Paul Bennett, “Other parts of the more modern collections (including a fine group of Jewish and Italian gravestones and Italian period sculptures) were lost to the bulldozer.”³¹

The DoA later had to remove the Eusperides finds to Tobra, where the objects are safe but poorly housed³² and the DoA administration was moved, together with all its library, archives, including museum records, maps, plans and photographs to the former Italian Fish Market buildings in Benghazi. The Italian Fish Market building were then seriously damaged by shell and mortar strikes and it was thought that the archives had been completely lost. The materials stored in the basement were buried by debris when the building was destroyed.³³ Later in 2018, it appeared that some Eusperides crates had been in the same basement and some of these materials were recovered.

The Benghazi DoA now has no space other than the Berka Barracks. According to Paul Bennett in 2018, “there is no home for what is left of the salvaged library, archives and other materials. There is also a complete lack of resources to provide a new base of operations.”³⁴

VI. The request calls for return, but Libyan authorities cannot protect returned items and the global public has no access to Libyan museums.

When the 2017-2018 MOU was enacted, all of Libya’s twenty-four museums were closed. While a few museums are now open in Tripoli for local visitors, international access is extremely limited. Both the U.S. and U.K. strongly advise against travel to Libya, advising, “Do not travel to Libya due to crime, terrorism, civil unrest, kidnapping, and armed conflict.”³⁵

Libyan archaeologists stated in 2016 that items in museums were “safe,” but they were “safe” only because they had been hidden behind locked doors and camouflaged by furniture.³⁶ This is not safe. At the time, ICOM stated that it believed that Libyan museums were secure, but “there are no guarantees, as the country has not been considered safe enough to send people on the ground to assess the recent situation.”³⁷

³⁰ *Id.* at 213.

³¹ *Id.*

³² *Id.* at 221

³³ *Id.*

³⁴ *Id.*

³⁵ The US government travel advisory website specifically suggests “Draft a will and designate appropriate insurance beneficiaries and/or a power of attorney. Discuss a plan with loved ones regarding care/custody of children, pets, property, belongings, non-liquid assets (collections, artwork, etc.), funeral wishes, and etcetera.” <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/libya-travel-advisory.html>

³⁶ “Looters exploit the political chaos in Libya,” *The Art Newspaper*, 10/20/2016, <http://theartnewspaper.com/news/news/looters-exploit-the-political-chaos-in-libya/>

³⁷ *Ibid.*

VII. Basic educational infrastructure in Libya has been destroyed and must be completely rebuilt. The University of Benghazi is simply gone.

By 2017, as reported in *Libyan Studies*, not a single building at the large and modern campus of the University of Benghazi, once attended by thousands of students, was left standing. The university site, which had become embroiled in fighting several times, was a wasteland with only a few blackened walls left.³⁸ Some classes were being held in satellite locations, such as nearby former women's dorms, thanks to "the resilience and determination of teaching staff and students (and their parents)", not the government.

Even getting books on archaeological subjects into Libya has been impossible. In 2015 with the assistance of the World Bank Multi-Donor Trust Fund, three thousand copies of the Arabic edition of Philip Kenrick's *Tripolitania (Libya Archaeological Guides)* were printed to be circulated within the Department of Antiquities, and in schools and universities to try and build local support for archaeological work. However, there were so few university libraries or museums open to the public that there was no way to distribute them. Another publication done in 2020 in Arabic, Philip Kenrick's *Archaeological Guide to Cyrenaica*, was hoped to be shipped into Libya with the help of the US Embassy in Tunis into Libya in July 2020.^{39,40}

VIII. Libya's request for renewal fails to meet legal criteria under the 1983 Cultural Property Implementation Act.

The current Libyan request fails to meet the four key legal criteria set by Congress for import restrictions under the Cultural Property Implementation Act.

The current Libya Designated List is not based upon the analysis of facts identifying endangered sites or substantiating current looting required of CPAC by Congress under the Cultural Property Implementation Act. The request for renewal of the Libyan MOU calls for U.S. import restrictions covering the entire history of the geographic region that is Libyan territory from the Paleolithic through the Ottoman Era (12,000 B.C.-1750 A.D.) and on its ethnological material dating from 1551 to 1911 A.D. It covers everything from prehistoric lithic tools to Classical antiquities of the Roman period to Islamic furniture, brassware and calligraphy to nomadic herdsman's baskets and cooking pots – and everything in between.

Libya has made no showing that this entire, broad range of material is specifically at risk. The statute requires that the Libyan government demonstrate that Libyan art from all the requested

³⁸ Paul Bennett, *Notes from Libya*, *Libyan Studies* 49 (2018), p211, © The Society for Libyan Studies.

³⁹ Paul Bennett, *Notes from Libya*, *Libyan Studies* 50 (2019) p 190, © The Society for Libyan Studies

⁴⁰ Paul Bennett, *Notes from Libya*, *Libyan Studies* 51 (2020) p 183, © The Society for Libyan Studies

periods subject to import restrictions is in danger of looting.⁴¹ In fact, the Libyan government has previously denied the necessity for protections to monuments.⁴²

The 2017-2018 Libyan MOUs did not distinguish between items of historical or archaeological importance and items that are common, repetitive, and that are found outside of archaeological contexts, such as Ottoman period and earlier Islamic artworks, Tuareg materials, and the artifacts of the now-exiled Jewish communities of Libya.

On June 11, 2017, one year after UNESCO's designation, Libya's General Tourism Authority (GTA) criticized the decision of the World Heritage Committee to place five archaeological sites in Libya on the endangered world heritage list.⁴³ The five sites placed on the World Heritage danger list were Leptis Magna, the ancient city of Sabratha, Cyrene, the rock art site of the Akakus Mountain and Ghadames.

We agree that these sites are in serious danger. However, the thefts and losses to heritage taking place today in Libya are due to the country being in an active war, often surrounding sites, and through deliberate destruction by development unhampered by the Libyan governments.

Libya has largely failed to document and identify losses to heritage. On May 15, 2017, prior to the first hearing on the Libyan MOU, Libya issued a list of items stolen from Libyan museums. One statue on the list was allegedly stolen during WW2. It had been on public exhibit at the Cleveland Museum of Art for more than 25 years but never been claimed by Libya.⁴⁴ This list has not been updated.

The Libyan government has not engaged in cultural exchanges with the U.S., whether through traveling exhibitions, museum loans, or providing digital online access Libyan art and artifacts. There is no demonstration that import restrictions sought are "consistent with the general interest of the international community in the interchange of cultural property" as the CPIA requires.⁴⁵ Indeed, the 2017 Libyan Request stated, "Sharing of our cultural heritage is not feasible at this time because the crisis situation of armed conflict, civil unrest, and terrorism threat makes it not feasible to work out collaborative arrangements with foreign partners." The crisis continues unabated.

⁴¹ 19 U.S.C. § 2602(c)(2)(B).

⁴² Libya's Antiquities Department refutes UNESCO report on Leptis Magna, <https://www.libyaobserver.ly/culture/libyas-antiquities-department-refutes-unesco-report-lepits-magna>, Last visited July 18, 2022.

⁴³ Libya rejects UNESCO's decision to place five sites on endangered list, <https://www.libyaobserver.ly/culture/libya-rejects-unesco%E2%80%99s-decision-place-five-sites-endangered-list>, last visited 07/09/2017.

⁴⁴ Libyan authorities issued an international circular on looted antiquities from Libya in 2017, but that page has not been updated and is now unavailable.

⁴⁵ 19 U.S.C. §§ 2602(a)(1)(D) and 2602(e)(1)

The US market for legitimate Libyan artifacts is small. For illegal Libyan artifacts, it no longer exists. Antiquities sales in Libya are mostly local and inundated with fakes. There is not an active Western international market for looted Libyan artifacts. What market there is appears directed within the region, particularly the Middle East.

Finally, with respect to the statutory criteria for an MOU, there is no demonstrated current U.S. market for illegal Libyan art or artifacts, such that ending a market for pillaged artifacts would be of “substantial benefit in deterring a serious situation of pillage” as the statute requires.^{46,47} A repatriation ceremony was held in 2022 for the return of two statues from Cyrene in Libya that were stolen in Libya twenty-two years before and which had been exhibited for years at the Metropolitan Museum without a claim being made. The objects were from the Steinhardt collection; they had been seized in December 2021 by the Manhattan District Attorney and agreed to be forfeited.⁴⁸

IX. The current Libyan MOU includes the private and community property of minorities driven out of Libya and forced to leave their possessions and property behind. Jewish and Christian religious artifacts are included in the Libyan MOU by default. Synagogues, cemeteries, and Christian religious monuments have been vandalized, destroyed, and repurposed into Muslim mosques and secular centers.

The rushed July 2017 hearing and subsequent execution of an Emergency MOU and Designated List specifically including objects of Jewish heritage on December 5, 2017 shocked and appalled many members of the American Jewish community.

A number of major Jewish organizations arranged to meet with ECA and other State Department representatives after the announcement of the Libya emergency MOU to protest the granting of rights to Jewish religious community and personal property to the Libyan government. Libya’s persecution of its Jewish citizens during World War II was well known. Libyan Jews were sent to concentration camps in the Saharan desert and in Europe, and after the war, pogroms tolerated by its government had killed many and the Libyan government expelled virtually its entire Jewish population, seizing their property and possessions.⁴⁹

⁴⁶ 19 U.S.C. § 2602(c)(2)(B)

⁴⁷ In 2015, a Demeter/Persephone statue was attempted to be imported into the U.K. but was seized on entry. Imogen Calderwood, Government seizes 1,800-year-old looted statue of goddess Persephone worth £1.5million and vows to return it to Libya, Daily Mail September 1, 2015, <https://www.dailymail.co.uk/news/article-3218733/Government-seizes-1-800-year-old-looted-statue-goddess-Persephone-worth-1-5million-vows-return-Libya.html>

⁴⁸ Yousef Murad, US returns smuggled artifacts to Libya, AP, March 31, 2022, <https://apnews.com/article/science-travel-lifestyle-libya-united-states-f95e10c4f84e4389c89cdebfd5e5a77f>

⁴⁹ Jewish researchers in Europe and the U.S. have documented the destruction of synagogues and the tearing up of Jewish graveyards, tossing the bones aside. Jewish organizations have documented the conversion of synagogues to secular and Muslim uses and turning a Christian cathedral to a mosque - and the building of new high-rise buildings on a desecrated cemetery.

ECA representatives assured the representatives of Jewish organizations their concerns would be heard. But instead of carving out exceptions for Jewish and Christian religious and personal property, the same all-inclusive categories remained in the Designated List. The “revised” July 9, 2018 MOU simply removed the descriptive terms “Jewish”, “Hebrew” and “Christian” while utilizing the term “Ottoman,” a political descriptive that could cover all of the cultural identities of peoples in Libya during the period of Ottoman rule. At the same time, the introductory text of the Designated List stated that “Import restrictions are now being imposed on the same categories of archaeological and ethnological material from Libya as a result of a bilateral agreement entered into between the United States and Libya.”

The Designated List included, for example, scroll or manuscript containers, which “can portray deities, human, or animals, and which “may be inscribed in Arabic”... when Muslim objects do not depict deities, but Christian ritual objects often do.

In December 2018, frustrated with the State Department’s continued execution of all-inclusive MOUs with countries that had forced out Jews, destroyed or converted synagogues to mosques and uprooted graves from Jewish cemeteries, eighteen Jewish organizations, including B’nai B’rith International, JIMENA (Jews Indigenous to the Middle East and North Africa), the Conference of Presidents of Major American Jewish Organizations, The American Sephardi Federation, the ADL: The Anti-Defamation League, the Simon Wiesenthal Center, the World Jewish Congress North America, Historical Society of Jews from Egypt, Yemenite Jewish Federation of America, the Iranian American Jewish Federation (IAJF) and others, signed a letter to Secretary of State Michael Pompeo. The letter stated in part:

“The recent statement by the Principal Deputy Assistant Secretary for Near East Affairs, Joan Polashick, that the State Department is working on an additional five MOUs with Middle Eastern and North African nations makes it essential that a policy is in place that protects Jewish and Christian heritage by explicitly excluding them from any import restrictions and rejecting any state claims to individual and communal property.”

“We ask that the State Department’s Bureau of Education and Cultural Heritage adheres to the limitations set by Congress under the Cultural Property Implementation Act by denying broad, excessive import restrictions to nations that have neither valued nor cherished the ancient heritage of Jewish, Christian, and other minority peoples. We further request that all future MOUs from the region include provisions that list and name specific Jewish and Christian items to be excluded from the restricted list of items. Such items include: Torah scrolls, Torah cases, Jewish prayer books, Jewish manuscripts, religious ceremonial articles, and all Jewish ritual and prayer materials that include

Hebrew inscriptions or references to original Jewish owners – whether they be individuals or Jewish institutions.”⁵⁰

The above letter references a public presentation by then Principal Deputy Assistant Secretary for Near East Affairs, Joan Polashick, at a Smithsonian conference held October 23-24, 2018, Ms. Polashick noted that the State Department helped MENA countries to request MOUs and held up the Egyptian and Libyan MOUs as models.⁵¹

Since Ms. Polashick’s statement, a number of new MOUs with North African nations have been signed and Egypt’s renewed, and only one Designated List, for Morocco,⁵² specifically excludes Jewish religious objects. The proposed 2022 Libyan renewal appears to continue a pattern of actions at ECA to implement a policy to sign all-inclusive MOUs with as many Middle East and North African countries as possible, continuing to deny rights to community and personal property to persecuted and expelled religious minorities.

X. The current Designated List includes the private property of Tuareg and Berber nomadic peoples, only a small proportion of whose population lives in Libya, and almost none of whose ethnographic materials qualify for restriction under the standards in the CPIA contemplated by Congress.

Under the current MOU, Libya claims ownership and control over nomadic Tuareg and Berber ethnological materials up to 1911, the date of Italian colonization. Only 15-20 thousand Tuareg live in Libya. In comparison, approximately 2 million live in Niger, a country not subject to a U.S. MOU. Thus, of the 2903 items identified as Tuareg in the Musee du Quai Branly in Paris, one of the world’s largest and most comprehensive collections of Tuareg art and handicrafts, only four are from Libya: a tambourine, a talisman, and two photographs.

Libya seeks renewal of U.S. import restrictions and return of ethnological objects of the Tuareg minority. The Libyan Request covers all Tuareg items of material culture up to the year 1911, made from stone, metal, ceramic and clay, wood, bone and ivory, glass, textile, basketry and rope, leather and parchment, and writing. This element of the Libyan Request in no respect comports with Congress’ criteria for restrictions on ethnographic materials of particular meaning to a pre-industrial community as envisioned by the drafters of the CPIA.

⁵⁰ See: *18 Jewish Organizations Protest MENA Nationalization of Heritage to State Department Letter to Pompeo on Cultural Property Agreements with Syria, Iraq, Egypt and Libya – and Future Agreements with Algeria and 5 Other MENA Nations*, December 20, 2018, Cultural Property News, <https://culturalpropertynews.org/18-jewish-organizations-protest-mena-nationalization-of-heritage-to-state-department/>

⁵¹ Personal communication from Peter K. Tompa, who attended and made notes during the conference.

⁵² Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material from Morocco, Federal Register / Vol. 86, No. 13 / Friday, January 22, 2021, p 6562.

The items created and used by the nomadic Tuareg are household goods and decorative garments, bags, and jewelry that is subject to ordinary wear and tear and much hard usage. Because of this hard usage, there is very little Tuareg material culture remaining anywhere in Africa that is older than the late nineteenth century. The oldest Tuareg items will all have been exported from one of the eight possible source countries at least ten years before and would not be subject to import restrictions under the provisions of the Cultural Property Implementation Act.

Many Tuareg are traders by occupation, and the castes of artisans (blacksmiths, jewelers, etc.) have made and traded Tuareg goods to other Tuareg and to their Hausa, Falani (Wadabe) and other Saharan neighbors as a business for as long as there has been information available on Tuareg lifeways, in the late 19th century.

These items do not meet CPIA criteria. The CPIA requires that ethnographic material have some important character: “No object may be considered to be an object of ethnological interest” unless the object is “important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.”⁵³

Tuareg ethnographic materials are common, repetitive, and impossible to date precisely as being made prior to 1911 (unlawful to import) or after 1911 (lawful to import), the cut-off date in the Libyan Request. There is little to distinguish a 40-80-year-old Tuareg handicraft, which would be legal to import, from a well-cared for 110-year-old one, which would be illegal to import. Comparing the materials collected (as old) by European museums in the 1930s and 1940s, Kristyne Loughran, writing in “The Art of Being Tuareg,” Thomas Seligman and Kristyne Loughran, Eds. stated that, “Many of the forms they described in the past [19th century] still exist today, though some of the objects have become rare or are no longer used.”⁵⁴

Thomas K. Seligman states that the Tuareg “classical jewelry repertoire has remained remarkably stable over time.”⁵⁵ The traditional metal for Tuareg jewelry was a nickel/copper/zinc alloy (called “German silver” in the market, and “*kobo*” among the Tuareg) but coin silver was also used. About 45 years ago, sterling silver began to be used for jewelry, but *kobo* continues to be popular. Only in the last 20 years have there been dramatic changes in Tuareg jewelry design; it is often more delicate and less “tribal” in appearance than the fully traditional jewelry of the 1970s and 1980s.

⁵³ 19 U.S.C. §2601(2)(C)(ii)(II).

⁵⁴ “The Art of Being Tuareg,” Thomas K. Seligman and Kristyne Loughran, Eds., UCLA Fowler Museum (February 2006)

⁵⁵ *Id.*, p. 178.

Finally, the legislative history of the CPIA shows that Congress did not contemplate coverage of the types of Jewish, Berber, or Tuareg ethnological items requested by Libya. The legislative history makes clear that agreements under the CPIA were intended to apply only to a *"narrow range of objects possessing certain characteristics."*⁵⁶

The Committee *does not intend* the definition of ethnological materials under this title to apply to trinkets and other objects that are *common or repetitive or essentially alike* in material design, color, or other outstanding characteristics with other objects of the same time, or which have relatively little value for understanding the origins or history of a particular people or society."⁵⁷

Such ordinary items, whether Jewish, Christian, Berber, Tuareg, or those of Muslim Libyans, should not be included in any MOU between the U.S. and Libya.

XI. Coins on the current Designated List do not meet criteria for import restrictions. The vast majority of coins struck in Libya are not exclusively or even primarily found in Libya, and they circulated much more widely in ancient times. The CPIA requires that coins and other items restricted under an MOU be “first discovered within and subject to export control by” the State Party.

Despite failing to meet the statutory criteria, the Libyan Designated Lists issued December 5, 2017 and July 9, 2018 included many coins that circulated widely outside of Libya. We defer to the analysis by the International Association of Professional Numismatists (IAPN) submitted to CPAC July 14, 2022, which found that Greek silver and gold coins, Roman Imperial coins, Byzantine, Islamic and Ottoman coins, far from being exclusive to Libya, did not even meet the State Department’s recent self-imposed standard of “circulating primarily” in Libya. Any restrictions on these coins should be limited, per the statute, to coins “first discovered within, and subject to export control” by Libya.⁵⁸

XII. Cultural rights are inextricably tied to human rights. Human rights abuses are widely tolerated and even promoted by the Libyan government. Libya’s government cannot function as a valid partner with the United States in the protection of global cultural

⁵⁶ U.S. Senate Report, 97-564, "Implementing Legislation for the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, 97th Congress. Second Session: Miscellaneous Tariff, Trade, and Customs Matters (September 1982), 4, providing: "Only the term 'archaeological or ethnological materials of the State Party' requires fuller explication here. The Convention does not define this terms (*sic*). The definition is intended by the committee to reflect the understanding of U.S. negotiators that the application of import restrictions under agreements entered into under Section 203 or emergency actions taken under Section 204 is limited to a narrow range of objects possessing certain characteristics."

⁵⁷ Ibid.

⁵⁸ CPIA, 19 U.S.C. § 2601 (2).

heritage when it denies its citizens and its significant immigrant population their human, social, religious, and community rights.

As stated in the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, “2021 Trafficking in Persons Report: Libya”:

“Perpetrators committing human rights abuses, including human trafficking crimes, generally operated with impunity. The government did not publicly report statistics on prosecutions or convictions of trafficking offenders, including government officials and government-aligned militias that were allegedly complicit in trafficking crimes. The government did not report if it prosecuted or convicted any individuals involved in the investigation of 205 suspected traffickers that the attorney general’s office initiated in 2018, nor did it report if any of the 35 arrest warrants that it issued in January 2019 resulted in trafficking prosecutions or convictions during the reporting period.”⁵⁹

A government that closes its eyes to continuing violations of international law and commits egregious crimes against humanity on this scale cannot meet the CPIA’s criteria for self-help as protectors of cultural rights and heritage.

We recognize that Libya continues to experience political upheavals, has chronically ineffectual local and national governance, massive corruption undermining the rule of law, the dominance of large areas of the country by militias and criminal gangs, and a destabilized economy. Under these circumstances, renewal of the MOU with Libya would undermine the credibility of every other agreement under the Cultural Property Implementation Act.

We believe that if import restrictions on Libyan art and artifacts are to be continued, and can be justified under the facts, then the only lawful option is to enact emergency restrictions on the very limited types of artifacts meeting the “significance” criteria of the CPIA and which are actually subject to looting. Any emergency agreement should impose compulsory benchmarks for any continuing import restrictions requiring Libya to improve domestic protections for its cultural heritage and the cultural life of its people.

In the last five years the MOU has been in place, the factions fighting over Libya – when there has been a government at all - have ignored Libya’s cultural crisis. Not just archaeology and the study of history, but higher education as a whole is struggling to stay alive. There are individuals in what was once Libya’s cultural sector who care deeply about preserving Libya’s great monuments and historical sites, but they can do almost nothing against such massive government indifference to cultural loss.

⁵⁹ U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, “2021 Trafficking in Persons Report: Libya,” <https://www.state.gov/reports/2021-trafficking-in-persons-report/libya/>

What difference can an MOU make when an entire university, like the large, beautiful campus of Benghazi University is flattened and reduced to a few burnt walls? When the high point of archaeological work over five years is the successful sifting of tons of silt and soil gathered decades before from Haua Fteah Cave, when archaeologists are forced to stop work whenever gunfire and nearby explosions get too close? When success means taking two years to get a 5,000 € overseas grant to backfill a major site for its own protection?

The Libyan archaeologists and cultural workers who remain are desperate to protect World Heritage sites from crumbling, and to keep locals from bulldozing through site boundaries for land to build on or graze animals. But the reports indicate that cultural workers get more help from volunteers such as Libya's Boy Scouts than from its unstable governments.

XIII. Recommendations

The Committee for Cultural Policy and Global Heritage Alliance cannot support a renewal of the MOU with Libya; we recommend that the MOU be terminated. Libya is a failed state that cannot possibly meet the statutory requirements of the Cultural Property Implementation Act. Libya cannot now guarantee the safety and security of any objects returned to it.

If CPAC insists on recommending an agreement with Libya, the only legal alternative under the CPIA would be to terminate the current MOU and implement Emergency restrictions on the very limited types of site-specific objects exclusive to Libya, subject to current looting, and for which a demonstrated U.S. market exists.

Making good decisions requires good information. CPAC should insist that the Department of State acknowledge the public interest in an effective cultural policy by making public not only source country requests but also factual analyses of domestic threats to heritage in foreign countries and evaluation of foreign government actions. Transparency is the only path to fruitful, frank discussions by the public and by CPAC members.

The State Department makes public reports and analyses with respect to human rights, religious freedom and other matters essential to developing U.S. public policy. Their publication does not result in weakening of U.S. security or breaches in foreign relations; neither should building greater transparency at the Bureau of Educational and Cultural Affairs.

While safe harbor actions are beyond the scope of CPAC, it is also a goal of the CPIA to encourage the United States and foreign governments to make US museums their temporary partners in preservation in times of crisis and to safeguard source countries irreplaceable treasures in situations of conflict and violence.

We suggest that in the absence of an MOU and on the request of the GNU, US museums could assist in the preservation of Libyan heritage by providing temporary safe harbor to Libyan objects. Such temporary safe harbor could also help to fulfill UNESCO State Parties' obligation

to compensate for the lack of access to Libyan materials by providing access to scholars and the public. The AAMD's 2017 recommendation that US museums engage with Libyan cultural institutions to provide safe harbor to stolen objects has equal merit today.

Thank you for your attention to the comments of the Committee for Cultural Policy and Global Heritage Alliance.

Kate Fitz Gibbon
Committee for Cultural Policy, Inc.