

Comments on MOU Request from Government of Libya

July 6, 2017

The Global Heritage Alliance (“GHA”) makes these comments on behalf of itself and the Committee for Cultural Policy (“CCP”), a sister organization. GHA is an advocacy organization representing the interests of collectors, museums and the trade in archaeological and ethnological objects. CCP acts as a think tank that studies cultural property issues from the same pro-museum, pro-collecting focus. Without collectors, there would be no museums. Without museums, there would be no focal point for the preservation and display of archaeological and ethnological objects, and the appreciation of other cultures that comes with it.

GHA is pleased to comment on a proposed Memorandum of Understanding (“MOU”) with Libya. In so doing, GHA nonetheless expresses its concerns about the exceptionally short comment period, one that appears designed to minimize public comment critical of this unprecedented request. GHA also expresses concern about the lack of detail found in the request published on the State Department website.

The [Public Summary of Libya MOU Request](#) that has been made available is actually written by the Department of State, and “authorized” by the Libyan government. The Department does not provide copies of actual requests, which makes it impossible to know if the request itself complies with Congressional criteria.

Indeed, if anything, the lack of detail with regard to this request, and the speed in which the public and CPAC are being requested to consider it, counsels caution. There appears to be no reason for such haste, particularly since Libya’s troubles have been ongoing for some years now.

A. The Law

The Cultural Property Implementation Act (“CPIA”) contains significant procedural and substantive constraints on the executive authority to impose import restrictions on archaeological and ethnological objects. The Cultural Property Advisory Committee (“CPAC”) is to provide the executive with useful advice about this process. Here, it is even unclear whether Libya is making a “regular” or “emergency” request. This is significant because CPAC must make different findings according to what type of request is being considered.

“Regular” restrictions may only be applied to archaeological and ethnological artifacts of “cultural significance” “first discovered within” and “subject to the export control” of a specific UNESCO State Party. They must be part of a “concerted international response” of other market nations, and can only be applied after less onerous “self-help” measures are tried. They must also be consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.

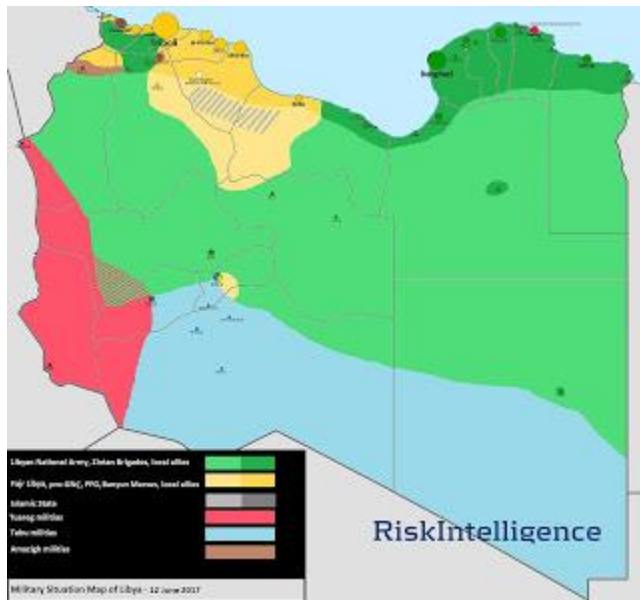
“Emergency restrictions” are narrower. They focus on material of particular importance, but no “concerted international response” is necessary. The material must be a “newly discovered type” or from a site of “high cultural significance” that is in danger of “crisis proportions.” Alternatively, the object must be of a civilization, the record of which is in jeopardy of “crisis proportions,” and restrictions will reduce the danger of pillage.

B. GHA Concerns about the Libyan Request

1. No Central Government Control

Since the fall of the Gaddafi dictatorship in 2011, Libya has been in turmoil. Today, it is one country with effectively three different governments, as well as a host of other local power centers under the control of armed militias. This reality makes this MOU request highly problematic. The following information can be found at BBC Libya Country Profile, available at <http://www.bbc.com/news/world-africa-13754897>. See also A Quick Guide to Libya’s Main Players, European Council of Foreign Relations, available at http://www.ecfr.eu/mena/mapping_libya_conflict. This information amply describes Libya’s current problems.

The National Transitional Council (“NTC”), a rebel leadership council which had fought to oust the Gaddafi government, declared Libya “liberated” in October 2011 and took over the running of the country. However, it struggled to impose order on the many armed militia that had become active in the months leading up to the ouster of Gaddafi. On September 11, 2012, U.S. Ambassador J. Christopher Stevens and three other American colleagues were killed during an attack on the U.S. Mission in Benghazi.



In August 2012 the NTC handed power to the General National Congress (“GNC”), an elected parliament which went on to select an interim head of state. Voters chose a new parliament to

replace the GNC in June 2014 - the Council of Representatives (“CoR”), which relocated to the eastern city of Tobruk, leaving Tripoli controlled by powerful militia groups. The Islamic State extremist militia took advantage of the conflict between forces loyal to the outgoing GNC and the new parliament to gain control of several coastal cities, including Derna and Sirte. Late in 2015, the UN brokered an agreement to form a new "unity" government - the Presidency Council, headed by unity Prime Minister Fayeze Sarraj - but both Tripoli and Tobruk administrations were reluctant to acknowledge its authority. Mr Sarraj and some of his deputies finally arrived in Tripoli in March 2016 and set up their headquarters in a heavily-guarded naval base.

As this request presumably was made on behalf of Libya’s weak “Unity Government,” one suspects it may be very well motivated as much by political considerations meant to shore up that government as anything else. Yet, if so, CPAC should be aware of the ramifications of any agreement. As part of every U.S. agreement on cultural property, the U.S. agrees to send any art that enters the U.S. illegally back to the source country. This policy applies even to art that has poor prospects of surviving in conflict-ridden nations, and art from oppressed ethnic or religious minorities that have been forced out of the source country. The CPIA does not provide for return of embargoed art to anyone but a source country government.

2. The Request is Over Broad

The request for the imposition of U.S. import restrictions covers 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. That is – virtually everything – up to 1911.

The material covered would be “archaeological material in stone, metal, ceramic and clay, glass, faience, and semi-precious stone, mosaic, painting, plaster, textile, basketry, rope, bone, ivory, shell and other organics. Protection is sought for ethnological material in stone, metal, ceramic and clay, wood, bone and ivory, glass, textile, basketry and rope, leather and parchment, and writing.”

In contrast to the broad request, the CPIA only allows restrictions to be put in place on items of “cultural significance” first discovered within, and hence subject to Libya’s export control which were exported from Libya after the date any restrictions are imposed. 19 U.S.C. §§ 2601, 2604, 2606.

3. No Cultural Administration

The cultural administrative staff of Libya appear in the request to have been scattered and in considerable disorder. The request fails to demonstrate that there is currently a government hierarchy capable of administering cultural heritage in much of the country, even if it wished to do so. The request provides numerous examples of failure by the Libyan government to address cultural heritage issues. It notes that

- “[A]rtifacts, which had been excavated from temples, were also stolen from the storerooms.”
- “Museums have also been vandalized and looted by invading militias.”
- “There are also reported thefts from museums and storerooms of documented and undocumented objects.”
- “[A]ll of the country’s twenty-four museums are closed.”
- Lacking government support, Department of Antiquities staff “continue to take personal responsibility for the objects housed in their institutions.”

4. No U.S. Market for Illicit Artifacts

The Libyan request’s description of the U.S. market for ancient artifacts in Libyan style does not claim that any came recently from Libya or that any were not legally acquired.

The Tuareg materials and Islamic objects of the 18th and 19th century for which “protection,” i.e. embargo is sought were legally available for trade in Libya for many decades and are widely and legally available in European, Asian, and US markets. The request does not even claim that ethnographic materials were restricted in export from Libya in the past.

5. No Access for U.S. Citizens, No Study, No Sharing of Excavated Materials

The request fails to meet criteria set by Congress that require that US citizens have access to Libyan culture through museum exhibitions or other venues. There is not a single traveling exhibition mentioned in the request.

Although the request acknowledges that foreign institutions and missions have done extensive archaeological work in Libya, these archaeological agreements do not allow sharing or even permanent export from Libya of any objects for study.

Based on the written request as presented by the Department of State, Libya’s recent governments have done little or nothing in the last decade to protect Libyan sites. Nor has any Libyan government made any effort to ensure that US citizens were able to access Libyan art and artifacts through traveling exhibitions, museum loans, and approved sales of redundant material or even through providing digital online access to art in Libya itself.

C. GHA’s Specific Recommendations

In light of the above concerns, GHA suggests that CPAC table the request until Libya further defines it and explains what steps it will undertake to ensure that such material that is repatriated is protected from further harm. If that is not possible, CPAC should treat the request as an “emergency” one, hold Libya strictly to its proofs, and should the request be approved, limit the designated list to site specific materials of cultural significance.

Finally, consistent with US Congressional policy, CPAC should advocate safe harbor for Libyan antiquities brought to the U.S. that are held for their protection and display in recognized public institutions, pending their return to Libya at such time that peace is reestablished in the country.