



**Association of Dealers & Collectors of  
Ancient & Ethnographic Art**

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VIA Regulations.gov Portal  
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

**Re: Proposed Memorandum of Understanding between  
the Government of the United States of America  
and a Government of Libya.**

Dear Dr. Sabloff and CPAC Members:

I write on behalf of the Association of Dealers and Collectors of Ancient and Ethnographic Art (ADCAEA) regarding the Committee's proposal for a Memorandum of Understanding ("MOU") with a Government of Libya ("Libya").

ADCAEA's principal objective is to advance the responsible and legal trading of ancient and ethnographic art and we therefore fully support practical measures to eliminate the destruction and illegal removal of cultural material from a country of origin.

However, we believe the Public Summary Request by Libya is rushed and ill-considered as addressed to the four determinations listed below:

**Point 1: Is the cultural patrimony of the State Party is in jeopardy from pillage of its archaeological or ethnological materials?**

There is no substantiated evidence archaeological or ethnological material from Libya has been pillaged and thereafter smuggled into the United States. The Public Summary Request theorizes the United States as the "single largest market for sales of archaeological material from Libya" and therefore surmises damage to Libyan archaeological sites is only a result of looting with finds sold to unethical middlemen and smuggled into the United States to realize vast profits.

However, the claim can be discredited with reports by Libyan archaeologists battling to save ancient heritage sites from destruction at the hands of vandals, extremist militants, and unscrupulous developers taking advantage of the current civil unrest by bulldozing ruins to utilize prime ground for urban expansion.<sup>1</sup>

So it is not beyond reason that objects are hidden for protection against destruction and will be returned once the country stabilizes. Such occurred after the looting of the Iraq Museum of Baghdad in 2003<sup>2</sup>. The Public Summary Request states even Libyan department of antiquities personnel are forced to take “personal responsibility for the objects housed in their institutions” because none of Libya’s competing government authorities can provide assistance, so any and all attempts to safeguard cultural objects within the country should be applauded.

Without offering supportive evidence, the Public Summary Request further claims objects, identified as Libyan based on “stylistic composition” and other vague criteria, have recently been offered online, through U.S.-based auction houses, and gallery sales.

However, the trade has seen no evidence of antiquities “gushing”<sup>3</sup> out of Libya. Whether in public or private collections, most material carries legitimate collection history from museum deaccession, division of excavated finds and from early days when objects were legally exported from their country of origin and now lawfully on the commercial market. Public or private, these are the only objects of interest for today’s ancient art buyer within the United States. Antiquities without collection history are rejected as a bad investment.

**Point 2: Has the State party has taken measures consistent with the Convention to protect its cultural patrimony?**

Libya is a war zone. At the time of writing, the European Council on Foreign Relations report Libya is divided and ruled by three competing governments and its territory controlled by six major militia factions, and many smaller parties and entities competing with one another for control<sup>4</sup>. It has porous borders, no working unified security force, an abundance of loose weapons, and commodities that can be smuggled to finance terrorist missions. Chief among these are Libyas’ lucrative oil sector and human trafficking, which reportedly generates up to US\$323m for ISIS and other jihadist groups. These groups are focused on luring international recruits, preferring to use their Libyan base and resources to plot and stage attacks on the West<sup>5</sup>.

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<sup>1</sup> <https://news.vice.com/article/libyan-archaeologists-battle-to-save-ancient-heritage-sites>

<sup>2</sup> <http://www.smithsonianmag.com/arts-culture/looting-iraq-16813540/>

<sup>3</sup> <https://artlawandmore.com/2016/10/21/looted-libyan-artefacts-seized-in-europe/>

<sup>4</sup> [http://www.ecfr.eu/mena/mapping\\_libya\\_conflict](http://www.ecfr.eu/mena/mapping_libya_conflict)

<sup>5</sup> <http://theconversation.com/political-chaos-in-libya-makes-it-a-haven-for-radical-terrorist-groups-78281>

Although the Public Summary Request claims an infrastructure for protecting their cultural property when not at war, without a single effective Government, Libya fails to demonstrate a hierarchy capable of administering cultural heritage in much of the country at this time, even if it wished to do so. There are two chairmen of antiquities, one based in Tripoli, the other in Benghazi, and, as US art historian and archaeologist, Susan Kane notes: “neither one is talking to the other”<sup>6</sup>.

In her November 2015 lecture, Kane further states “With two<sup>7</sup> de facto governments claiming authority in the country, no constitution yet written, no clearly operating legal system, no defined property rights, no organized police force, many contesting militias, and rising religious extremism, more damage is being done to the country’s cultural heritage than was caused by the events of the 2011 revolution.”<sup>8</sup>

Additionally, the Public Summary Request itself provides numerous examples of failure by the Libyan government to address cultural heritage issues including:

- Artifacts excavated from temples stolen from the storerooms.
- Museums vandalized and looted by invading militias.
- Reported thefts from museums and storerooms of documented and undocumented objects.
- Lack of government support forcing Department of Antiquities staff to “take personal responsibility for the objects housed in their institutions.”
- Defacing of mosques and unearthing of Islamic graves by extremists.

In July 2016, the five Libyan World Heritage sites, Archaeological Site of Cyrene, the Archaeological Site of Leptis Magna, Archaeological Site of Sabratha, Rock-Art Sites of Tadrart Acacus and the Old Town of Ghadamès were placed on the List of World Heritage in Danger by UNESCO<sup>9</sup>. When explaining their decision, they noted the “high level of instability in the country”, the presence of armed groups on and in the immediate site surroundings, the incurred damage and a serious threat of further damage to these sites.

Even Libyan archaeologists complain the organization’s assistance efforts on the ground have been inadequate.<sup>10</sup>

Libya’s neglect and failure to protect its cultural patrimony is not restricted to post 2011. In a 2006 BBC interview, the Libyan Department of Archaeology Chairman Mr. Guima Anag told Tripoli reporter Rana Jawad: “We’ve been deprived of the necessary funds to improve our systems, which have been archaic for a very long time, outdated, weak, inefficient, understaffed, under-funded and under-developed,” ... “The archaeological department says

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<sup>6</sup> <https://artlawandmore.com/2016/10/21/looted-libyan-artefacts-seized-in-europe/>

<sup>7</sup> Now three governments

<sup>8</sup> <https://hartdoctors.com/2015/11/11/susan-kane-lectures-on-threats-to-libyas-cultural-heritage/>

<sup>9</sup> <http://whc.unesco.org/en/news/1523/>

<sup>10</sup> <https://artlawandmore.com/2016/10/21/looted-libyan-artefacts-seized-in-europe/>

their 2005 budget was 3m dinars (\$2.23 million) on paper but only a quarter of this amount was allocated”<sup>11</sup>.

When objects stolen from the Museum of Sabratha were later seized at the Egyptian border in 2003, the Libyans were unable to claim ownership: “This is hard to admit, but Libya did not have the proper proof that those pieces are genuinely from Sabratha.” said Mr. Anag. They remain at the Museum of Alexandria in Egypt.<sup>12</sup>

**Point 3: Does the application of import restrictions, in the context of a concerted international effort, to archaeological or ethnological material of the State Party would be of substantial benefit in deterring a serious situation of pillage, and less drastic remedies are not available?**

Despite being among the most financially insignificant sectors of the art market, the antiquities trade is heavily scrutinized and regulated. The US already has Bilateral Agreements with sixteen countries with Designated Lists of restricted cultural items subject to import restrictions<sup>13</sup>. These bilateral agreements were established to protect archaeological objects of “cultural significance” “first discovered within” and “subject to the export control” from their country of origin.

However, these principles have been distorted by the Public Summary Request to embargo the importation of everything, including common objects traded on the legitimate commercial market, regardless of cultural or monetary value. Such objects exist in numerous quantities, were exchanged over substantial geographical areas in antiquity that today encompass many nations, and possess no special or rare features of form, size, material, decoration, inscription or iconography.

The Public Summary Request lists the material covered to 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.”

Such a request is over broad, essentially covering anything and everything from 12,000 BC to 1911 - a little over 100 years ago and promises to be a logistical nightmare for all concerned. Such a request forces the US government to take full responsibility for 14,000 years of art with possible Libyan connections without the slightest feasible support from any Libyan government.

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<sup>11</sup> <http://news.bbc.co.uk/2/hi/africa/4951770.stm>

<sup>12</sup> <http://news.bbc.co.uk/2/hi/africa/4951770.stm>

<sup>13</sup> Belize, Bolivia, Bulgaria, Cambodia, Canada (expired), China, Colombia, Cyprus, Egypt, El Salvador, Greece, Guatemala, Honduras, Italy, Mali, Nicaragua, and Peru. Iraq and Syria are addressed with the Iraq 2004 Emergency Protection Act and the Iraq 2008 Emergency Restriction and Designated List and the Syria Cultural Heritage Initiative. See: <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements>

As noted in point (2), Libya's recent governments have done little or nothing in the last decade to protect Libyan sites and there is no evidence an MOU with Libya would be of substantial benefit in deterring a serious situation of pillage. Nor has the Public Summary Request offered any proof that any of the objects offered on the US market came from Libya recently or were illegally 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 these ethnographic materials were restricted in export from Libya in the past.

Security in Libya, not a United States MOU will provide far greater assistance for the cultural heritage of this country. As Hafeed Walda, an adviser to the Libyan Department of Antiquities, states: "The lack of security hinders cooperation between local and foreign groups, research on materials in museums and collections which are now stored away, the protection of sites due to the spread of arms and lack of law enforcement and the prevention of illicit trade in antiquities".<sup>14</sup>

In June, 2017, Aljazeera reported "forces loyal to renegade Libyan general Khalifa Haftar have been accused of burning more than 6,000 books, including works on religion, politics, poetry and philosophy"<sup>15</sup> Pronounced as "intellectual terrorism" by more than 100 novelists, books by Egyptian Nobel Prize-winning novelist Naguib Mahfouz and Arabic translations of books by German philosopher Friedrich Nietzsche were allegedly among dozens seized from a truck heading from Tobruk to Benghazi and destroyed.

How therefore, can the United States some 6,000 miles away, be expected to protect "leather and parchment, and writing", as stated in Public Summary Request, when such material is willfully destroyed by a Libyan government?

**Point 4: Is application of import restrictions in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific and educational purposes?**

By law, a request made for a Memorandum of Understanding (MOU) under the Cultural Property Implementation Act (CPIA) requires the requesting nation must ensure American citizens suffer no loss of access as a result of placing an embargo on its art.

Although the Public Summary Request (PSR) acknowledges 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. Furthermore, the PSR makes no commitment to provide US citizens with access to

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<sup>14</sup> <http://www.theArabweekly.com/Culture/6672/Academics-fight-to-protect-Libyan-antiquities>

<sup>15</sup> <http://www.aljazeera.com/news/2017/06/forces-loyal-libya-khalifa-haftar-burn-6000-books-170618150815482.html>

Libyan culture through museum exhibitions or any other venues. Not one single traveling exhibition is mentioned nor is there any commitment for such a proposal in the future.

It is the right of each U.S. citizen to have access to their and their fellow-citizen's heritage, whether through the marketplace or in U.S. museums and cultural institutions.

With all twenty-four museums in the country closed, none of the Libyan governments have the ability to ensure any US citizen has even the remotest access Libyan art and artifacts through traveling exhibitions, museum loans, or by even digital online access.

Even before the uprising in 2011, there were no exhibits of Libyan art planned or shown in the United States for over ten years. In fact, the only recent showcase of Libyan art is not displayed in the United States but in London, ironically organized by three private collectors. "If you tell a Westerner that you are from Libya, they are surprised that it is an ancient country and that it is facing Europe" states organizer Najlaa el-Ageli.<sup>16</sup>

## **Conclusion:**

There is no evidence to support the position that current MOUs now in place have deterred illegal excavation within their State, but interpretation by U.S. federal authorities often prevents the legal importation of common artifacts freely traded on the legitimate commercial market. Misapplication of MOU import restrictions whereby artworks that left a source country many decades ago are treated as "illicit", has disadvantaged and discouraged US citizens by wrongly restricting their ability to freely engage in the scientific, cultural and educational exchange of archaeological and numismatic objects.

ADCAEA acknowledges there is a history of objects being stolen, destroyed or illegally sold creating a multi-national determination to keep a countries cultural heritage intact by means of legislation and enforcement. However, the plethora of recent reports about a trade in looted Middle Eastern objects entering the United States and funding terrorists is based on discredited data.<sup>17</sup> Politically motivated agreements under the CPIA with authoritarian Middle Eastern governments are encouraged by anti-trade enthusiasts in a bid to shut down the entire legal art trade. Such cultural highjacking benefits no-one.

The protection and preservation of cultural objects for future generations is essential. As major sponsors for the excavation, scholarship, and preservation of ancient sites throughout the world, the efforts of private collectors and museums is vital to the preservation of archaeological objects.

In conclusion and of utmost importance: as part of every US agreement on cultural property, the US agrees to send any art seized at US borders back to the source country. CPIA does not provide for the return of embargoed art to any but a source country government, despite little probability of survival. The logistics of monitoring such a monumental range of material aside, with no single effective government, there is no guarantee Libya presently has the hierarchy capable of handling any such return.

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<sup>16</sup> <http://www.theArabweekly.com/Opinion/7710/Jewelled-Tales-of-Libya-displayed-in-London>

<sup>17</sup> <https://www.rawstory.com/2016/05/how-much-money-is-isis-actually-making-from-looted-art/>

For the reasons stated, ADCAEA strongly recommend this hurried and ill-considered request be postponed until a single effective government is established and remedies less drastic than the application of such restrictions set forth considered.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sue McGovern-Huffman', written over a vertical line.

Sue McGovern-Huffman, President  
Association of Dealers & Collectors of Ancient & Ethnographic Art (ADCAEA)



*Goats and garbage in Libya on archaeological site, pre 2011.*  
[https://www.temehu.com/Cities\\_sites/museumvandalism-archaeological-robberies.htm](https://www.temehu.com/Cities_sites/museumvandalism-archaeological-robberies.htm)

