

ART AND HERITAGE LAW REPORT

JEWISH MINORITIES IN THE MIDDLE EAST



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By Katherine Brennan and Kate Fitz Gibbon

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Authors: Katherine Brennan and Kate Fitz Gibbon
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Cover photo: A Yemenite family walking through the desert to a reception camp set up by the American Joint Distribution Committee near Aden. November 1, 1949. National Photo Collection of Israel.

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The Committee for Cultural Policy, Inc.
P.O. Box 4881
Santa Fe, NM 87502

www.culturalpropertylaw.org
www.culturalpropertynews.org



Yemeni Jewish necklace of a type worn by Jewish brides, collected 1980s. Almost all fine Yemeni traditional silver jewelry was made by Jewish silversmiths.
Photo courtesy Ron Garner.

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CULTURAL PROPERTY AGREEMENTS AND THE RIGHTS OF ETHNIC MINORITIES IN THE MIDDLE EAST

A DISTURBING PATTERN OF MOUS: IRAQ, SYRIA, EGYPT, LIBYA, AND YEMEN

In February 2018, the International Council of Museums (ICOM), with the support of the United States Department of State, published the “Emergency Red List of Cultural Objects at Risk for Yemen.” [2] The list covers a broad range of Yemeni objects that, because of recent political turmoil, are said to be at risk of being illegally trafficked.

The U.S. State Department funded, produced, and partnered with ICOM in creating the Yemen Red List. In the past, the issuance of a Red List has often been a precursor to execution of an agreement with the United States on cultural property under the 1983 Convention on Cultural Property Implementation Act. It seems likely that Yemen will soon seek a Memorandum of Understanding (“MOU”) or other emergency import restrictions to specifically prohibit the import of Yemeni antiquities into the U.S.[3] Four other Arab nations experiencing political or military crises have done the very same: Iraq, Egypt, Libya, and Syria have all been granted practically all-encompassing import restrictions on their state-designated antiquities in light of social-political upheaval within their borders.

But granting an MOU to Yemen would continue a disturbing pattern of unduly comprehensive import restrictions with Middle Eastern nations under the Convention on Cultural Property Implementation Act. The restrictions exclusively

benefit the States’ governments and their self-directed property claims over cultural and religious artifacts—at the expense of the ownership rights and basic human rights of individuals in minority populations. They have an especially devastating impact on the countries’ Jewish communities, which were forcibly expelled and their property confiscated by each of these States’ governments in the mid-twentieth century.



The nave of the Eliahu Hanavi synagogue in Alexandria, Egypt. Author David Lisbona, Haifa, Israel, 6 February 2007, Creative Commons Attribution 2.0 Generic license.

Other minority religious and ethnic groups have fared little better in the last decade of conflict in the Middle East. In Iraq, for example, Kurdish, Christian, and Yezidi minorities were subject to violence amounting to genocide, according to Secretary of State John Kerry in 2016, in regions held by Da’esh (ISIS).[4] However, even after elimination of Da’esh in most of Iraq, the Iraqi government continued to turn a blind eye to many arbitrary and unlawful killings, rapes, and seizures of property perpetrated on minority groups by government forces, militias, and police.[5] The most well-protected urban areas are not immune. In July 2016, “religious leaders, members of parliament, and Baghdad-based judges said that some political parties sanctioned criminal networks seizing Christian property” in Baghdad itself.[6]

The pervasive pattern of abuse of both human and property rights of religious and ethnic minorities in the Middle East raises serious questions about the protection of minority

Ornaments: Metal hands, Torah sticks (finials) in different shapes and materials.



Illustrations from Yemen Emergency Red List. Credit International Council of Museums and US Department of State.

interests within the nationalist framework of cultural policy today. The inability – or unwillingness – of state actors to protect cultural interests outside of their own immediate political interest is too frequent to ignore. The devastation in the Middle East not only highlights the failure of the 1970 UNESCO Convention to ensure the protection of global cultural heritage after almost 50 years, despite its adoption by hundreds of nation states. It also makes a compelling argument for embracing broader concepts of global stewardship and international protection of heritage as a more workable approach to halting destruction in war and civil crisis, and to preserving mankind’s achievements for the future.[7]

THE 1983 CONVENTION ON CULTURAL PROPERTY IMPLEMENTATION ACT

In 1983, Congress enacted the Convention on Cultural Property Implementation Act,[8] (“CPIA”), 19 U.S.C. § 2601–2613, to implement the United States’ ratification of two articles of 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property to preserve at-risk archaeological sites and encourage the international exchange of cultural artifacts.

Under Section 2602 of the CPIA, the United States may place import restrictions on the cultural property of a requesting foreign State, whether by a bilateral Memorandum of Understanding or in some cases by unilaterally imposing emergency import restrictions, based upon Article 9 of the 1970 Convention. Import restrictions may be applied only if four parameters are met.[9]

First, the President must determine that the cultural patrimony of the State Party is in jeopardy from pillage. Second, the State Party must have taken measures on its own consistent with the Convention to protect its cultural patrimony. Third, implementation of the import restrictions must be 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” and such restrictions “would be of substantial benefit in deterring a serious situation of pillage.” Finally, application of United States import restrictions must be consistent with the general interest of the international community in the interchange of cultural property among nations.[10]

The protected “archaeological materials” are defined by the CPIA to encompass any object of archaeological interest first discovered within and subject to the export controls by the State Party, that are of cultural significance, at least 250 years old, and discovered as a result of scientific excavation, clandestine digging, or exploration on land or water.[11]

On the other hand, “ethnological materials” are defined broadly to include any object of ethnological interest first discovered within and subject to export controls by the State Party... that is “important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or contribution to the knowledge of origins, development or history of that people.”[12]

The U.S., on the recommendation of the Cultural Property Advisory Committee (CPAC), may unilaterally impose “Emergency Restrictions” if the State party submits a request to the committee outlining that the State’s archaeological and ethnological materials are in jeopardy and that the four requirements that the President must consider are met.[13] “Source countries,” or countries with a rich history of archaeological or ethnological materials found within their borders, have enacted legislation throughout the twentieth century that place blanket prohibitions on the export of cultural artifacts found within the country. In many, if not most cases, nations that enact export restrictions apply them

Writing

Ancient alphabet, Arabic or Hebrew writings on stone or metal plates; on wooden sticks; on paper or parchment, with calligraphy or illuminations.



1. Copper alloy plaque, Yemen (Amran), 1st c. BC-2nd c. AD (probably), 31.8 x 17.8 x 2 cm. © Trustees of the British Museum

2. Limestone block, South Arabia, 1st c. AD, 30.5 x 26.5 x 11.5 cm. © Musée du Louvre, dist. Grand Palais/Thierry Ollivier

3. Wooden stick, Yemen, 3rd-5th c. AD, 23.7 x Ø 2.6 cm. © The National Museum, Sanaa

4. Hebrew manuscript, Yemen (Sanaa), 14th-15th c., 27.5 x 20.9 cm. © Bibliothèque nationale de France (BnF)

5. Illuminated Arabic manuscript, Yemen, 27 x 16 cm. © Dar al-Mahtutat, Sanaa

Illustrations from Yemen Emergency Red List. Credit International Council of Museums and US Department of State.

to virtually all objects of 100 years of age – sometimes even less. (For example, Libyan law makes documents of all kinds over 50 years old subject to State ownership.[14]) These restricted objects often include not only ancient and archaeological materials, but also scientific floral, animal, mineral and fossil samples, books, historical papers, coins, currency, furniture, and even postage stamps.[15]

Some countries with comprehensive export restrictions have recently experienced violent socio-political upheaval and widely publicized looting and destruction of cultural property within their own countries. Articles in the international press, many now recognized as wildly exaggerated,[16] have repeatedly reported that terrorist organizations like ISIS profit extensively from the international trafficking and sale of antiquities.[17]

These Middle Eastern States in conflict have looked to market nations, particularly the United States, to enforce import restrictions on the import on any cultural property on comprehensive “designated lists” of objects. The false emphasis on a supposed major market for looted activities has resulted in giving import restrictions priority over any other forms of ameliorative activity. The temporary safe harbor offered by U.S. and European museums for objects during war and civil crisis, for example, has been largely ignored. So have concerns about government forces themselves taking part in looting and in targeting historical monuments and sites.

In addition, the broad and inclusive language of these MOUs, import restrictions, and Designated Lists of protected objects have resulted in all-encompassing embargos on nearly all cultural property that could be sourced from one of these States, whether that State has a rightful property claim to it or not.[18] As can be seen in the import restrictions imposed for countries such as Libya or Syria, the category of “ethnological materials” in an import restriction can be used to encompass almost any object of cultural value, including extremely common objects, made for trade as recently as the early 20th century, whether that object is specifically culturally relevant to the country of origin, or a true ownership right on the part of the government exists.

HUMAN RIGHTS AND OVER-BROAD CULTURAL PROPERTY DEFINITIONS

The Designated Lists of restricted objects for Iraq, Syria, Libya, and Egypt all state the purpose of the United States' implementation of the CPIA as "preserving cultural treasures that are of importance to nations from which they originate" and achieving a "greater international understanding of our [alternatively mankind's] common heritage." [19]

This is, of course, a worthy goal—if application of this goal was not so difficult to reconcile with traditional notions of culture, property rights, and human rights—or to reconcile the content of existing MOUs with the very requirements of the CPIA itself. The fourth requirement of the CPIA states that import restrictions on cultural property must be "consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes." [20]

We must then ask: what is the "general interest of the international community in the interchange of cultural property" that the CPIA requires CPAC to consider?

To some scholars, the 1970 UNESCO Convention "globalized the concept that cultural property is worth protection on moral, not just economic, grounds." [21] Several scholars have noted that the protection of human rights is one of the central tenets of international art law. [22] Beyond mere physical protection of cultural sites, advocates argue that governments should "ensure the continued relationship of people in occupied territories with those sites." [23]

While there is no internationally recognized "human right to cultural property" or "human right to cultural heritage," [24] international law does indeed recognize a "human right to culture."

Article 22 of the Universal Declaration of Human Rights states that:

"Everyone, as a member of society... is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." [25]

The UNESCO Declaration of the Principles of International Cultural Co-operation, (1966) echoes the same sentiment to protect "mankind's common heritage" that the CPIA and the import restrictions seek to protect:

1. Each culture has a dignity and value, which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.
3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind. [26]

Still, even definitions of the "human right to culture" range from the right and ability to interact with culture, [27] to broader definitions that define cultural rights to encompass other rights listed under the Universal Declaration of Human Rights, including the right to self-determination, the right to education, and of course, basic property rights. [28]

When examining the "property" component of "cultural property," the Universal Declaration on Human Rights states that, "everyone has the right to own property alone as well as in association with others [and that] no one shall be arbitrarily deprived of his property." [29] Some would even argue "the distinction sometimes made between property rights and human rights is spurious. Human rights are simply part of a person's property rights." [30]

States' cultural property legislation clearly reflects that "cultural heritage" and "cultural property" is ultimately property—subject to possession and ownership (in many cases by the States). But international law also says that "cultural rights" are human rights to culture, and they are thus inextricably tied to the property ownership rights of humans, whether alone or "in association with others." One contributor to UNESCO, in defining "cultural rights" in 1970, noted that "[t]here can be no doubt that the most strenuous efforts must be made to protect the cultural rights (the absolute freedom of expression) of the individual, who is the basic cultural unit." [31] It is difficult to see how an entity (the State's government) can assert a superior ownership claim to both human and community rights to cultural property. [32]

That a national government determines what is "cultural heritage" is further problematic in regard to the enforcement of these rights. In discussing the challenges of how we actually conceptualize cultural rights, Yehudi A. Cohen points to the shift in "social organization" from local communities to nation states, noting that "people are no longer deriving their rights (political, economic, religious, educational, etc.) from their local communities. According to Cohen, as a result, "governments are having considerable difficulty in maintaining a balance between loyalty to the State and



Holocaust survivors returning to Libya from concentration camp Bergen-Belsen. Author unknown, 1945, Courtesy Yad Vashem, Jerusalem, Israel.

allegiances to ethnic groups among others.”[33]

This failure to properly balance the interest of local communities or certain ethnic groups is even clearer when considering that access to one’s cultural heritage is often considered one of the most important attributes of a human right to culture:

The right of access to and enjoyment of all forms of cultural heritage is guaranteed by international human rights law, including . . . in particular, from the right to take part in cultural life, the right of members of minorities to enjoy their own culture and the right of indigenous people to self-determination and to maintain, control, protect and develop cultural heritage. [34]

So in a world where culture is often based on individualism and participation in a community—not a state—why then should States have the sole authority to decide what culture should be protected—and rights of exclusive ownership be held by the State—especially when State ownership of cultural property *excludes* the interests of certain cultural groups?

CASE STUDIES: DENIAL OF ACCESS AND PROPERTY RIGHTS IN MENA STATES

In response to requests from four Arab states facing violent internal socio-political upheaval, CPAC, leveraging 19 U.S.C. § 2603, has enacted MOUs or other emergency import restrictions with the following States: Iraq in 2004 and 2007,[35] Egypt in 2016,[36] Syria in 2016,[37] and Libya in 2017. [38]

All four states declare state ownership of cultural property found within the state; all four states have requested extremely broad import restrictions on essentially all cultural property within that state. Importantly, the import restrictions imposed on behalf of these countries include broad language that includes *all* cultural heritage tangentially tied to those states: covering categories that span antiquities to ephemera.



1793 Babylonian Talmud, one of several sacred Jewish texts recovered from the waterlogged basement of Saddam Hussein's intelligence headquarters in 2003 together with tens of thousands of Jewish books, documents, and objects. The items were rescued and brought to the U.S. to be restored. Photo by U.S. National Archives.

And all four countries have long and ignominious history of mistreatment of Jewish citizens and their property within that State.[39]

Yet restrictions on importation that would return any listed property to the State governments fail entirely to recognize these histories of abuse, neglect and denial of access. They merely grant excessively broad rights of ownership and control to State governments. To give just a single example, the list of items restricted from import from Syria includes writing "On paper, parchment, leather, wood, ivory, stone, metal, textile, stucco, clay, mosaic, painting, and ceramic, in pictographic, cuneiform, Phoenician, Aramaic, Syriac, Hebrew, Greek, Latin, and Arabic scripts," in a time period that includes "Paleolithic, Neolithic, Bronze and Iron Ages, Persian, Greco-Roman, Byzantine, and Islamic until the end of the Ottoman Period, a total span from roughly 1,000,000 BC to 1920 AD." [40]

IRAQ AND THE IRAQI JEWISH ARCHIVES

Under Iraq's Antiquities Law No. 59 of 1936 as amended by No. 120 of 1974 and No. 164 of 1975, all antiquities are considered property of the state, and no individuals are allowed to dispose of such property or claim ownership of such antiquities.[41]

In 2008, the United States imposed emergency import restrictions on any archaeological or ethnological materials from Iraq.[42] Iraq's designated list of endangered cultural property protects "Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance illegally removed" from Iraqi cultural institutions. The list specifically states: "[r]itual and ecclesiastical objects pertaining to Iraq's religious communities include, but are not limited to, crosses, chalices, Kiddush cups, candelabra, and Torah pointers." [43]

A recent and well-publicized example of how access to objects belonging to a minority community can be denied under the current U.S. cultural property regime came when the State Department began considering the return of 2,700 Jewish objects to Iraq. The objects had been discovered in a flooded basement of an Iraqi intelligence office in Baghdad in 2003 and were brought to the United States. They underwent approximately \$3 million in restoration and were on display at the National Archives and Records Administration (NARA) and in the Jewish Museum of Maryland, traveling also to institutions in New York City, Miami, Atlanta, and Southern California and other venues.[44]

Objects in the collection ranged from personal documents, such as school records and family memorabilia,[45] to religious texts and artifacts, including portions of a Hebrew Bible from 1568, fragments of Torah Scrolls and “tik” (cases for Torah scrolls) and a Haggadah (Passover guide), hand-written and decorated by an Iraqi youth.

The objects had been placed in a Baghdad synagogue for safekeeping when the majority of Iraq’s Jewish population fled the country in the 1950s, following almost a decade of violence, executions, and kidnappings that led many Jews to flee Iraq, leaving behind their personal assets.[46]

The objects, seized in the middle of the night by armed police from the synagogue where they were stored, were subsequently stored in the basement of a building housing Saddam Hussein’s secret police. Many other community records and property were taken under similar situations of duress. When talks began in 2013 to return the artifacts brought to the U.S., known as the Iraqi Jewish Archives, Iraq’s position was that the objects were legally owned by the Iraqi people and that “the current government should not be held responsible for the pillage of the prior regime.”[47]

In 1949, Iraq’s Jewish population was estimated at 130,000.[48] With Israel’s establishment in 1948, Iraqi Jews became the targets of violence.[49] Between 1950 and 1951, about 90 percent of the Jewish population left Iraq. Most went to Israel.[50] By the early 1970s, only a few elderly Jews remained in Baghdad, and an estimated more than \$200 million worth of Jewish community property was left behind. After the exodus of Iraqi Jews, some feeble attempts were made to encourage Jewish Iraqi citizens to return.[51] However a violent regime change in 1963 led to laws banning Jews from selling property unless they proved citizenship and laws requiring all Iraqi Jews, whether living in Iraq or abroad to register for identification cards within 90 days or otherwise be stripped of their citizenship and property.[52] In the years that followed, Jews were executed on trumped up charges and barred from attending universities. [53] Jews remaining in Iraq regularly faced show trials and executions, and following the Six Day War in 1967, Jewish savings and properties were blocked, their jobs were taken from them, and their movements and communications restricted. [54]

Later, in 1970, these anti-Jewish laws would be abolished and some sequestered property was released. But still, the damage was done: by 1975, most Jews had already had their property confiscated and had been forcibly expelled, leaving the “refugees destitute, with no funds or property to start their life anew.”[55] Now, Baghdad’s Jewish population alone has dwindled to less than ten—insufficient numbers to perform important religious ceremonies like the minyan.[56]

The U.S. National Archives and Records Administration, which restored and holds the Iraqi Jewish Archives, describes its role as providing accessibility to the written record of Iraqi Jewish life in what had once “generally been a tolerant, multicultural society” through preservation and digitization of the records seized when “most Iraqi Jews fled and were stripped of their citizenship and assets.”[57] Some observers who have argued the merits of returning or retaining the archives to Iraq have noted that the Iraqi Jewish Archives are not really “archives” but rather a somewhat random assembly of community records and personal possessions. It has also been said that the NARA digitization program has made the most valuable items in the archives accessible to all scholars. Others feel strongly that the archives are the property of Jews forced from the country, and returning them to Iraq would deny both full access and the possibility of making claims for individual personal property.

The American Jewish community has consistently maintained that Torah Scrolls belong in use in synagogues and not in storage, especially in the hands of governments and in countries where there are few Jews to make use of them. After lengthy negotiations between Iraqi government authorities and the National Archives, a number of Torah Scroll fragments found in the Iraqi Jewish Archives which could not be repaired and put to use were buried in a Jewish cemetery in NY, at a ceremony attended by the Iraqi Ambassador to the US at the time.[58]

In August 2003, after the Iraqi Jewish Archives were already in the U.S., an agreement was signed between the Coalition Provisional Authority (CPA) in Baghdad and the National Archives and Records Administration (NARA),[59] with the support of the U.S. Department of State, which specified that the archives were brought to the US for repair and restoration and to be exhibited, after which they would be returned to Iraq. This agreement, made soon after the Iraq invasion, was not an MOU, but nonetheless reflected the U.S. State Department’s longstanding tendency to support nationalizing cultural property ownership laws, rather than adhering to Congress’ statutory criteria for cultural property agreements under the Cultural Property Implementation Act.[60]

In October 2017, Senator Charles Schumer requested that the archive of 2,700 items not be sent back to Iraq, stating “This collection does not belong to the Iraqi government, it belongs to the ancient and proud Iraqi Jewish community – many now here in the States — that was exiled many years ago and forced to leave their belongings behind”[61] Other Jewish objects have been under scrutiny for whether they should be returned to Iraq, in light of the Iraq’s actions against its Jewish community, such as a 200 year-old Torah scroll that mysteriously ended up at the Israel’s embassy in Jordan, where Jewish artifacts were often brought during the Iraq War.[62]

LIBYA

The most recent Memorandum of Understanding restricting importation into the U.S. of cultural property is with the State of Libya. The “Emergency Import Restrictions Imposed on Archaeological and Ethnological Materials from Libya” were published in the Federal Registry by the Department of Homeland Security on December 5, 2017.[63]

Libya’s Law no. 2 of March 3, 1983 concerns archeological monuments, museums and documents protects any object created by man connected with the human cultural heritage, and that are more than one hundred years old, on condition that it was discovered or found within the Socialist People’s Libyan Arab Jamahiriya.[64] The Act establishes the Libyan Antiquities Authority to determine what “must be considered as an archaeological monument, relic, or documents.”[65]

Libya has a very comprehensive national-ownership law that applies to cultural property only fifty years old. The Libyan law includes illustrative examples of what may be considered archaeological monuments, relics, or documents; for example, protected texts (which may be written on any material) “includes manuscripts, political, administrative and... other documents more than fifty years old,” are all considered government-owned cultural property,[66] unless they have been registered to the Libyan Antiquities Authority’s inventory.[67] Any buildings within an archaeological area are considered “the private property of the antiquities authority” and “may not be made available to another without the authority’s agreement.”[68]

The U.S. import restrictions came after reports of looting in Libya following the Arab Spring, including vague reports of illicitly trafficked Ottoman-era objects, classical statues and Jewish manuscripts.[69]

An emergency MOU was recommended by the State Department, despite Libya’s clear failure to meet the self-help provisions of the CPIA or to make Libyan heritage publicly available through museum loans or other methods. Instead, the Request effectively highlighted the Libyan government’s poor record of archaeological preservation and its acknowledged inability to protect its artifacts from theft and destruction by its own troops and those of the three other major militias holding large areas of territory in the country. The Libyan Government’s Request for an MOU stated that every one of Libya’s 24 museums was indefinitely closed. Museum artifacts were said to be hidden behind locked doors and camouflaged by furniture.[70]

Libya’s General Tourism Authority (GTA) criticized the decision of the UNESCO World Heritage Committee to place five archaeological sites in Libya on the endangered world heritage list, stating the information was false[71] and that major sites such as Leptis Magnis were not at risk.[72] Just two months prior to State Department review of Libya’s Request, Libya issued a list of items said to have been stolen from Libyan museums. One statue on the list was allegedly stolen during WW2, and had been on public exhibit at the Cleveland Museum of Art for more than 25 years, but had never been claimed by Libya.[73]

Despite Libya’s apparent failure to meet Congressional criteria for a bilateral agreement under the CPIA, on February 23, 2018, the United States and Libya agreed to sign a Memorandum of Understanding imposing import restrictions on Libya’s cultural heritage dating from 12,000 B.C. through 1750 A.D. and ethnological materials “derived from sites of religious and cultural importance” in Libya dating from 1551 to 1911 A.D.[74]

The regulations are far-reaching, covering both individual personal property (“jewelry and personal adornments”, “luxury furniture” even “funerary monuments”) and “ceremonial paraphernalia” “including boxes (such as Koran boxes, plaques, pendants, candelabra,” [75] amongst other things, and broad categories of ethnological materials made on or before 1911 AD including architecture with religious motifs (e.g. such as architectural ornaments as would be found in homes and synagogues); and “books and manuscripts,” including texts written on vellum and which may “include the Koran and other Islamic books and manuscripts.”[76] Jewish writings are simply not mentioned, but the broad scope and use of “includes” clearly places the contents of synagogues, menorahs, and Torahs firmly in the restricted categories: the list includes, for example, “scroll and manuscript containers for Islamic, Jewish, or Christian manuscripts.”[77] Jewish activists condemned the MOU, arguing that the agreement “legitimizes the confiscation of Jewish property” by the Libyan government.[78]

Throughout the twentieth century, anti-Semitism pervaded the socio-political atmosphere in Libya. Countless stories detail Jews forcibly expelled from the country, allowed to bring with them only one suitcase.[79] Most of Libya's Jews left the country soon after Israel's establishment in 1948; when a wave of anti-Jewish violence broke out in Libya; June of 1948 saw the death of twelve Jews and destruction of an estimated 280 homes in protest to Israel's founding.[80] Between 1949 and 1951, more than thirty thousand Jews fled their country.[81] With Libya's independence in 1951, anti-Semitic laws followed,[82] including two laws in 1970 that confiscated the property of any individual residing or affiliating with Israel, but the law made basically no distinction between Jews and Israelis.[83] After the conclusion of the Arab-Israeli War in June 1967, the majority of the remaining Jews in Libya fled, mostly to Italy, only permitted to take their personal effects and approximately \$56, the standard amount permitted to any Libyan traveler under the country's currency laws.[84]

Even preceding passage of the Libyan antiquities law in 1983, in 1972, the Libyan government ordered roadwork to be done through Tripoli's Jewish cemetery.[85] A shopping mall, the Bourge Al Fatah, was constructed on top of a Tripoli cemetery, and in Benghazi, bones from a Jewish cemetery tossed aside or boxed and warehoused.[86] By 1987, former Libyan Jews claimed that 72 synagogues and schools had passed out of Jewish hands in Libya.”[87]

In recent years, exiled Jews have attempted to reclaim the millions of dollars' worth of assets confiscated by Colonel Muammar Gaddafi as the Libyan government attempted to ameliorate its past indiscretions.[88] But still today Jews attempting to reenter the country are reportedly (and repeatedly) denied visas to enter (and therefore access cultural property once belonging to their communities).[89]

EGYPT

The Egyptian government has pursued a bifurcated path with respect to Jewish and Christian minority heritage. On the one hand, Egyptian Christians face periodic violence, damage and destruction of Church property and ongoing discrimination in daily life. Egypt's once vibrant Jewish community has been reduced to a few dozen elderly residents and access to Jewish records held by the Egyptian government is a serious continuing problem. On the other hand, Egypt has spent considerable sums to restore badly dilapidated Jewish properties that no longer serve a religious function because there are so few Jews remaining in Egypt. The most striking example of this is the restoration of the original Maimonides Yeshivah dating to the 12th century and the adjacent Rav Moshe Synagogue, known as the Maimonides synagogue, a 19th century building on a site in Cairo that has belonged to the Jewish community since the 10th century. The reopening of the beautifully restored synagogue was, however, marred by cancellation of further celebrations by the then Director of the Supreme Council of Antiquities, Zahi Hawass, who stated that Jews were drinking wine and dancing inappropriately.[90]

The better-known urban Jewish sites have for the most part been protected and guarded in recent decades under the auspices of the Egyptian government. They are designated by the Supreme Council of Antiquities as “protected” under Egyptian law. While the local Jewish communities' ownership the buildings is recognized, it is not known what will happen when the last of Egypt's Jews has died, nor what will be the fate of the records of the community. The Egyptian government has said it will digitize the records in the Jewish Library of Cairo, but in 2016, the Cairo Post reported that the Cairo Jewish community's leader, Magda Haroun, had called on the government to scan the records, saying the records were not properly stored and that she feared continuing neglect.[91] Haroun had asked the Biblioteca Alexandria to digitize the records but it had declined, saying the request needed to come from the Ministry of Antiquities.[92]

In July 2017, another major restoration project was announced; the Egyptian government stated in February 2018 that it has expended approximately \$5 million dollars US to restore the Eliahu Hanavi Synagogue in Alexandria.[93]

While reluctant to engage directly with Israel on heritage matters, the Egyptian government has been willing to discuss funding from American Jewish groups to restore and maintain Jewish heritage in Egypt and the tiny remaining Cairo community has received some American support.[95]

In January 2018, the U.S. called on Egyptian President Sisi to continue efforts to promote diversity and to remedy relations with Egyptian Coptic Christian groups.[96] Many Christian sites in Egypt have been severely damaged in the civil instability of the last decade. The Egyptian army has also been culpable. An Egyptian archaeological group reported in 2011 that the 5th century St. Bishoy monastery had been attacked by army forces in the Wadi Natrun, and at the Monastery of St. Makarios of Alexandria in Wadi el-Rayyan, in the Faiyum, a monk was killed and 10 injured.[97]

While officially, the value of Pharaonic, Islamic, Coptic, Christian, and Jewish heritage is acknowledged, there is little other public evidence that the Egyptian government recognizes the longstanding role of the Jewish population in Egypt. For example, when the National Museum of Egyptian Civilization partially opened in Cairo in 2017, it was



*Soldier conducting the choir at the Jewish School in Benghazi, 1944.
Beth Hatefutsoth Photo Archive, Tel Aviv, Israel.*

reported that no Jewish items were placed on display.[98]

Under the Egyptian Law on the Protection of Antiquities, known as Law No. 117, enacted August 6, 1983, all antiquities are deemed “public property” and possession of such antiquities is prohibited, with the exception of antiquities whose ownership was already established when the law came into effect in 1983.[99] An “antiquity” under the Egyptian law includes any movable or immovable property that is “a product of any of the various civilizations or any of the arts, sciences, literatures, and religions of the successive historical periods” from prehistory until “one hundred years before the present.”[100]

A Memorandum of Understanding between the United States and Egypt entered into effect on November 30, 2016. [101] The MOU’s attendant Designated List of protected cultural objects includes “scrolls, books, manuscripts, and documents, including religious, ceremonial, literary, and administrative texts. Scripts include hieroglyphic, hieratic, Aramaic, Hebrew, Greek, Latin, Coptic and Arabic.”[102] Writings on a variety of materials, from wood to metal and stone that contain such languages are also protected.[103] It should be noted that only Islam and Christianity are mentioned by name on the designated list’s protected objects. Nonetheless, virtually all objects of Egyptian cultural heritage dating from the Predynastic period (5,200 B.C.) through 1517 A.D are included.[104]

Within that MOU, the Egyptian Government promised to “endeavor to build fruitful relationships with Egyptian civil society groups concerned with protecting and preserving Egypt’s cultural heritage as represented in the Designated List.”[105] The Designated List of protected cultural property specifically notes that “such items often constitute the very essence of a society and convey important information concerning a people’s origin, history, and traditional setting.”[106]

The fact that official Egyptian policy sometimes conflicts with actual government actions raises concern, since, as Magda Haroun, one of the half-dozen remaining elderly Jewish women remaining in Cairo asked, “[a]ccording to the stories, Jews lived in Egypt since the pharaohs. Do you want to make centuries of history vanish?”[107] Also problematic, according to Haroun, is “the failure [of the Egyptian government] to draw a distinction between Judaism as a religion and the Israeli state.”[108] Haroun herself long maintained a register of Jewish sites and antiquities to be safeguarded. However, although a vocal advocate of their preservation for the Jewish community,[109] she believes that as a practical matter, they should be used. A synagogue in Heliopolis was recently used for a photography exhibition and performance by a Sufi group.[110] Drop of Milk, a nonprofit organization organized in part by Haroun, was involved. Drop of Milk was founded with the specific intention of restoring Jewish buildings for alternative uses, including general usage arts and community centers.[111] Drop of Milk has received funding from The American Research Center in Egypt.

A key remaining challenge is the difficulty of access to the communal Jewish registers now held at the Egyptian National Archives under the Ministry of Culture. Some Jewish organizations have raised concerns about documentary materials needed for ongoing religious practices or for academic usage. The Nebi Daniel Association[112] has sought permission to make an electronic copy of the communal registers that can be deposited abroad. While the Egyptian Minister of Culture does not currently object to a digital copy being made, the permission of the Foreign Minister to transfer it abroad has not been forthcoming. On June 26, 2000, Nabil Fahmy[113] denied the request of a Brooklyn-based organization to transfer Jewish records to New York because “these artifacts are in the possession of the Jewish Temples in Egypt while the remaining are in the possession of the Egyptian Jewish Community,” and expressly stating that those objects are registered as Egyptian Antiquities and are therefore subject to Egypt’s cultural property laws prohibiting export. [114] It is problematic that Egyptian government policy denies full access to archives that may be necessary to trace family origins and connections.

Only twelve synagogues remain in Cairo, many having deteriorated. While the Egyptian government has a far better record of preservation and restoration of Jewish synagogues than other Middle Eastern nations by according them antiquity status, anti-Zionism and anti-Semitic sentiment pervades the socio-political atmosphere, especially with the ongoing warfare in the Sinai Peninsula. Although the Egyptian government has vowed to protect Egypt’s Jewish monuments, there is not a consistent policy that ensures that they will be well cared for.[115] The power imbalance at least is clear: at this point, it is estimated that there are less than twenty Jews left in Egypt,[116] all elderly women. Six women, all over the age of sixty, comprise Cairo’s entire Jewish population, with Magda Haroun the youngest. [117] Without a clear commitment to facilitate actual access to the heritage of minority communities, the Egyptian government cannot be held to have satisfied the Congressionally mandated conditions for inclusion of objects of Jewish heritage in an MOU.



Stereograph, albumen, Zaoud el Mara, Jewish Quarter, Alexandria, Egypt, 1898, B.W. Kilburn, publisher, Library of Congress Prints and Photographs Division Washington, D.C.

SYRIA

Under Syrian Law, “all movable and immovable antiquities, and antiquities regions in the Syrian Arab Republic are public properties of the state,” excluding those immovable antiquities with proper registration and documentation. [118] “Antiquities” includes all movable and immovable properties dating back to “at least two hundred Christian years or two hundred and six Hejira years.”[119]

On May 9, 2016, the “Protect and Preserve International Cultural Property Act,”[120] was introduced in the House of Representatives. According to its text, the bill was designed to “protect and preserve international cultural property at risk due to political instability, armed conflict, or natural or other disasters, and for other purposes” and specifically to permit the President to impose emergency import restrictions and emergency protection for Syrian cultural property.

The legislation thereby avoided the necessity of first receiving a request from Syria per the requirements of the CPIA,[121] the UNESCO Convention or of having prior review from the Cultural Property Advisory Committee, effectively bypassing the minimal requirements of the CPIA that Syria protect its cultural property or meet other requirements of the CPIA.

When the Act became effective in August 2016, the Government Accountability Office (GAO) Report entitled “Cultural Property: Protection of Iraqi and Syrian Antiquities” included in its list of “cultural property” individual assets, as well as communal, religious, and cultural artifacts, including Torah scrolls, which had been forcibly left behind by Jews in both Iraq and Syria.[122]

The Syrian “Designated List” of archaeological and ethnological materials subject to the import restrictions included not only Byzantine and Early Islamic works, but also “[t]orahs and portions thereof: Scrolls bearing Hebrew writing in black ink, wound around two wooden rods, and originally housed in a cylindrical case” and “religious, ceremonial, literary, and administrative material, including but not limited to maps, archival materials, photographs, and other rare or important documentary or historical evidence.”[123] Also included are “Jewish paintings [which] may include iconography such as menorahs.”[124]

Like other Designated Lists, the list for Syrian artifacts recalls in its statement of purpose that the CPIA’s goal is to “promote U.S. leadership in achieving greater international cooperation toward preserving cultural treasures that are of importance to the nations from which they originate and greater international understanding of mankind’s common heritage.” [125]

There are clear issues in the Syrian legislation’s prioritization of State rights over human and community rights – issues

that amount to a deliberate indifference to the historical facts of persecution of Syria's Jews. In the 1940s, Syrian Jews faced violent anti-Zionist sentiment, resulting in the deaths of many Syrian Jewish citizens and destruction of Jewish synagogues and property. Even after many Jews left Syria for Israel, the Syrian government imposed immigration bans, required identification cards, imposed curfews, prohibitions on movement, restrictions on children's schooling, ownership of phones or radios, and confiscated the property of deceased Jews. Although the restrictions were relaxed in 1976, they were re-imposed in 1979.[126] Years later, although Jews were still ostensibly allowed to practice their religion and maintain their customs and allowed to travel for limited, temporary purposes, Jews were still subject to restrictions on the sale of property, identification cards, employment and marriage restrictions.[127]

Many cultural objects were secreted out of Syria in response to restrictions placed on the Jewish communities. The famed Aleppo Codex, widely regarded as the most accurate version of the Hebrew Bible, had been safeguarded in Syria for nearly six hundred years. But following the Anti-Jewish riots in 1947 in Syria, the Codex was hidden and eventually sent secretly to Israel, with some of its pages going missing along the way.[128]

However, while the Codex would technically fall under Syria's cultural property legislation, what has followed has been a debate about *community* ownership (not state ownership) of the sacred texts: the small, but vocal Aleppo Jewish community has claimed that the text should return to Syria—while others have worked with Israel to assist with the return of the missing pages and to complete the Codex,[129] where it now sits alongside the Dead Sea Scrolls at the Israel Museum in Jerusalem. Still, the Syrian government reportedly only became interested in the Codex's whereabouts after an American antiquities buyer offered \$20 million for the texts in the 1950s, causing the object's Jewish protectors to hide the object still deeper.[130]

More recently, between 1993 and 1995, nine leather-bound books, known as the "Crowns of Damascus," written in Spain and Italy between 700 and 1000 years ago, were secretly taken from Syria to the National Library of Israel, after having been guarded inside synagogues in Syria for years. Rabbi Avraham Hamra, who assisted the operation, has noted that the Syrian government would likely not seek the return of the books, and considered the bibles as "Syrian Jewish cultural property," belonging to the Syrian Jewish community.[131]

The books were evidently written in Spain and Italy, which raises additional questions about whether Syria may even claim these books to be Syrian Jewish cultural property. However, after passage of the U.S. legislation, even if Syria did not dispute ownership of the texts, the United States Import Restrictions Imposed on Archaeological and Ethnological Material of Syria would nevertheless prohibit their import into the United States, based solely on the fact that the books fall within the broad category of "religious, ceremonial, literary, and administrative material, including but not limited to maps, archival materials, photographs, and other rare or important documentary or historical material" under the restrictions.[132]

TREATMENT OF RELIGIOUS MINORITIES HIGHLIGHTS SERIOUS FLAWS IN U.S. CULTURAL POLICY

How do we reconcile the human right to "rights in property" with the enforcement of State ownership of all cultural property in countries like Syria, Iraq, Libya and Egypt, and where the very nature of state ownership deprives minority religious communities and individuals of not only their *own* property, but also their "cultural right" to access such property?

The countless human rights violations in countries that have been granted import restrictions – import restrictions that would retribute State-appropriated objects to persecuting States – are cause to reconsider current U.S. cultural policy. It is plain fact that MOUs issued under the CPIA have been interpreted over-broadly, challenging the good sense, ethical and moral standards, and the human rights obligations of the United States.

[1] Copyright The Committee for Cultural Policy, Inc. Contributing CCP staff included Katherine Brennan and Kate Fitz Gibbon.

[2] *Emergency Red List of Cultural Objects at Risk for Yemen*, ICOM http://icom.museum/fileadmin/user_upload/images/Redlists/Yemen/RL_YEMEN_EN_Pages.pdf

[3] Yemen Claims Jewish Religious Artifacts, *Cultural Property News*, <https://culturalpropertynews.org/yemen-red-list-includes-jewish-religious-artifacts/>.

[4] *Iraq 2016 Human Rights Report*, updated 3/29/17, United States Department of State, Bureau of Democracy, Human Rights and Labor, at 3, <https://www.state.gov/documents/organization/265710.pdf>

[5] *Id.* at 3.

[6] *Id.* at 61.

[7] Thomas G. Weiss and Nina Connelly, *Cultural Cleansing and Mass Atrocities: Protecting Cultural Heritage in Armed Conflict Zones*, J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy, No. 1, 2017, http://www.getty.edu/publications/pdfs/CulturalCleansing_Weiss_Connelly.pdf.

[8] 19 U.S.C. §§ 2601–2613.

[9] “Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.” Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property of 1970, Art. 9 (UNESCO).

[10] 19 U.S.C. § 2602(a)(1)(A)–(D).

[11] 19 U.S.C. § 2601(2)(i).

[12] *Id.* at §2601(2)(ii).

[13] 19 U.S.C. §2602 (f). See also William G. Pearlstein, *Buying and Selling Antiquities in Today’s Market*, 3 Spencer’s Art L. J. (2012) <http://www.artnet.com/magazineus/news/spencer/spencers-art-law-journal-7-17-12.asp#pearlstein>.

[14] *Law Concerning Archaeological Monuments, Museums, and Documents*, Libyan Arab Jamahiriya. Law No. 2 (March 3, 1983) Art. 1 (third).

[15] Import restriction legislation in signatory State Parties often utilize the broadest possible definition of “cultural property” in the 1970 UNESCO Convention, although the convention itself states that the term “cultural property” is whatever is “specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science,” and then goes on to list categories of tangible property. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property of 1970, Art. 1 (UNESCO).

[16] Katherine Brennan and Kate Fitz Gibbon, *Bearing False Witness: The Media, ISIS, and Antiquities*, Committee for Cultural Policy, (Dec. 1, 2017) <https://culturalpropertynews.org/wp-content/uploads/2017/12/CCP-Bearing-False-Witness-The-Media-ISIS-and-Antiquities-1.pdf>; Michael Press, *How Antiquities Have Been Weaponized in the Struggle to Preserve Culture*, Hyperallergic (Dec. 7, 2017), <https://hyperallergic.com/415471/how-antiquities-have-been-weaponized-in-the-struggle-to-preserve-culture/>

[17] Following a more than 5-year dearth of seizures in US or Europe of looted items from conflict-territory, two 31-year-old art dealers from Spain were arrested in March 2018, and the arrest was said to be a “smoking gun” linking antiquity sales to terrorism. Georgi Kantchev, *Suspected Traders of Ancient Art Linked to Islamic State Are Detained*, Wall Street Journal, March 29, 2018) <https://www.wsj.com/articles/spanish-police-detain-two-men-suspected-of-selling-antiquities-linked-to-islamic-state-1522327053>. Compare a well-researched report from the perspective of Syrian subsistence diggers, which analyses theft and trafficking of cultural objects. See Neil Brodie and Isber Sabrine, *The Illegal Excavation and Trade of Syrian Cultural Objects: A View from the Ground*. <https://www.tandfonline.com/doi/full/10.1080/00934690.2017.1410919?scroll=top&needAccess=true&>

[18] Channah Farber, *CPIA* (2018) (on file with author).

[19] See e.g. Executive Order 13350 (2005); Import Restrictions Imposed on Archaeological and Ethnological Material of Iraq, 73 FR 23,334 (Apr. 30, 2008) (19 C.F.R. 12).

[20] 19 U.S.C. § 2602(a)(1)(D).

[21] Kimberly L. Alderman, *The Human Right to Cultural Property*, 20 Mich. State Int’l L. Rev. 69, 74 (2011).

[22] Erik Jayme, *Human Rights and Restitution of Nazi-Confiscated Artworks from Public Museums: The Altmann Case as a model for Uniform Rules?*, *Kunstrechtsspiegel* 49 (2007) <https://journals.ub.uni-heidelberg.de/index.php/>



Maghrebi Sephardi Jews, Morocco, circa 1919. Author Unknown. Wikimedia Commons, public domain.

[kunstrsp/article/viewFile/35873/29520](https://www.kunstrsp/article/viewFile/35873/29520)

[23] Alderman, *supra* note 21 at 74, citing Kimberly Alderman, *The Designation of West Bank Mosques as Israeli National Heritage Sites: Using the 1954 Hague Convention to Protect Against In Situ Appropriation of Cultural Sites*, 44 CREIGHTON L. REV. (2011).

[24] In fact, one scholar has written that “culture” and “heritage” are phrases that are inherently contradictory: “Culture is not a heritage, an accumulation of received ideas, but the method adopted by each social group to organize its own experience by relating it to the experience of others.” Giulio Carlo Argan, *Two Cultures*, Unesco Cultural Rights at 89.

[25] Universal Declaration of Human Rights, art. 22 (1948).

[26] Declaration of Principles of International Cultural Co-operation, art. 1, Nov. 4, 1966.

[27] Breten Breytenbach, *Cultural interaction*, UNESCO Definition of Cultural Rights at 42.

[28] Working Paper prepared by the Secretariat, in *Cultural Rights as Human Rights*, UNESCO at 10 (1970). In fact, dating as far back as the 1863, the Lieber Code specifically defines cultural property as a form of “private property. Matthew D. Thurlow, *Note: Protecting Cultural property in Iraq: How American Military Policy Comports with International Law*, 8 Yale Human Rights & Development L. J. 153, 156 (2005) (citing Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, art. 34 (Apr. 24, 1863)).

[29] Universal Declaration of Human Rights, art. 17.

[30] Yoram Barzel, *Economics Analysis of Property Rights*, 4 (1997).



Postcard, *Ecole Juive (Jewish School)*, North Africa, early 20th century, courtesy Center for Jewish History, New York, NY.

[31] Breten Breytenbach, *Cultural interaction*, UNESCO Definition of Cultural Rights at 40.

[32] Indeed, according to the United Nations Human Rights Office of the High Commissioner, “human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent, and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law.” *What are Human Rights?*, OHCHR, <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

[33] Yehudi A. Cohen, *From Nation State to International Community*, UNESCO (1970) at 77; 79. <http://unesdoc.unesco.org/images/0000/000011/001194eo.pdf>. Cohen does argue that strengthening national regimes, will ultimately assure securing of individual rights.

[34] Report of the Special Rapporteur in the field of cultural rights, A/HRC/31/59 at 12; See also Kimberly L. Alderman, *The Human Right to Cultural Property*, 20 Mich. St. L. Rev. 69, 73 (2011) (“individuals “have the human right to access cultural materials and sites, and that this access is necessary for meaningful participation in cultural life.”)

[35] Executive Order 13350 (2005); Import Restrictions Imposed on Archaeological and Ethnological Material of Iraq, 73 FR 23,334 (Apr. 30, 2008) (19 C.F.R. 12)

[36] Import Restrictions Imposed on Certain Archaeological Material From Egypt, 81 Fed. Reg. 87,805 (Dec. 6th 2016) (to be codified at 19 C.F.R. pt.12).

[37] Import Restrictions Imposed on Certain Archaeological Material From Syria, 81 FR 53916, <https://www.federalregister.gov/documents/2016/08/15/2016-19491/import-restrictions-imposed-on-archaeological-and-ethnological-material-of-syria>

[38] Emergency Import Restrictions Imposed on Archaeological and Ethnological Materials From Libya, 82 FR 57,346 (Dec. 5, 2017) (to be codified at 19 C.F.R. pt. 12).

[39] Ron Prosor, *The Middle East's Greatest Untold Story*, The Huffington Post, https://www.huffingtonpost.com/ron-prosor/the-middle-east-s-greatest-untold-story_b_1652777.html

[40] <https://www.federalregister.gov/documents/2016/08/15/2016-19491/import-restrictions-imposed-on-archaeological-and-ethnological-material-of-syria>

[41] Antiquities Law No. 59 of 1936, art. 3 (Iraq).

[42] The import restrictions were based on the earlier “Emergency Protection for Iraqi Cultural Antiquities Act of 2004,” H.R. 1047, which authorized the President’s emergency authority under the CPIA, 19 U.S.C. § 2603.

[43] Import Restrictions Imposed on Archaeological and Ethnological Material of Iraq, 3 FR 23,334 (19 CFR 12), art. G (6).

[44] Susan Ingram, *Exhibit at Jewish Museum preserves Iraqi Jewish heritage*, Washington Jewish Week (Oct 27, 2017), http://washingtonjewishweek.com/42011/exhibit-at-jewish-museum-preserves-iraqi-jewish-heritage/arts/arts_features/museums/.

[45] Sandi Fox, *Who owns the Jewish treasures that were hidden in Saddam Hussein’s basement?* PBS (Apr. 29, 2014), <https://www.pbs.org/newshour/world/stolen-treasures-iraqi-jewish-community>.

[46] *Id.*

[47] *Id.*

[48] Stephen Farrell, *Baghdad Jews Have Become a Fearful Few*, New York Times (June 1, 2008), <http://www.nytimes.com/2008/06/01/world/middleeast/01babylon.html>.

[49] Speculation about the inciters of the violence has varied from Israeli operatives to anti-Zionist groups. Dalia Hatuqa, *Iraqi-Jewish archive triggers ‘traumatic memories,’* Al Jazeera (Jan. 22, 2018), <https://www.aljazeera.com/news/2018/01/iraqi-jewish-archive-triggers-traumatic-memories-180122153032515.html>.

[50] *Id.* citing Fischbach.

[51] The Iraqi government passed Law No. 11 of 1960, eliminating a prior law that affecting Jewish Iraqi citizens that invalidated Jewish Iraqi passports and sequestered their property. Fischbach at 64.

[52] *Id.* Fischbach at 64.

[53] Fox, *supra* note 45. Carol Basri, *The Jewish Refugees from Arab Countries: An Examination of Legal Rights — A Case Study of the Human Rights Violations of Iraqi Jews*, 267 Fordham Int’l. L. J. 656 (2003).

[54] *Id.* at 686.

[55] *Id.* at 706 (citing Sabri Jrisiv, Director of the Institute of Palestine Studies).

[56] Farrell, *supra* note 48.

[57] <https://www.ija.archives.gov/>

[58] Frank Eltman, *Damaged Iraqi Torah Scrolls Buried in Long Island*, Times of Israel, 12/17/2013, <https://www.timesofisrael.com/damaged-iraqi-torah-scrolls-buried-in-long-island/>

[59] Agreement between The Coalition Provisional Authority and The National Archives and Records Administration,

[60] See, for example, “The Executive is not authorized to establish import controls without international cooperation unless an emergency condition exists as defined by law, and Congress did not intend to authorize comprehensive import controls on all archeological objects exported from a country of origin without its permission. The purpose of the program is not to keep art at home, but to help protect archeological resources from pillage; the findings required by the CCPIA were established for that purpose.” Mark B. Feldman, Conference Statement at Symposium: Reform of U.S. Cultural Property Policy: Accountability, Transparency, and Legal Certainty, Benjamin N. Cardozo School of Law,



Hebrew text, Benayah ben Sa'adyah ben Zechariah. Yemen: 1469. Valmadonna Trust Library, MS 11, courtesy Sotheby's.

New York, N.Y. April 10, 2014. <https://culturalpropertynews.org/mark-b-feldman-reform-of-u-s-cultural-property-policy/>

[61] Office of Senator Charles Schumer, Schumer: State Dept once again unwisely plans to return confiscated Judaica collection to Iraq; Senator renews call to not send back to Iraq nearly 3,000 Jewish artifacts that were originally seized by Saddam Hussein's regime, Oct. 3, 2017. <https://www.schumer.senate.gov/newsroom/press-releases/schumer-state-dept-once-again-unwisely-plans-to-return-confiscated-judaica-collection-to-iraq-senator-renews-call-to-not-send-back-to-iraq-nearly-3000-jewish-artifacts-that-were-originally-seized-by-saddam-husseins-regime>

[62] Justin Moyer, How a long-lost Torah went from Iraq to Israel — and why Iraq may want it back, The Washington Post (Jan. 23, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2015/01/23/how-a-long-lost-torah-went-from-iraq-to-israel-and-why-iraq-may-want-it-back/?utm_term=.24606f972fe4.

[63] Emergency Import Restrictions Imposed on Archaeological and Ethnological Materials From Libya, 82 FR 57346 (Dec. 5, 2017) (to be codified at 19 C.F.R. pt. 12) (hereinafter "Libyan Import Restrictions").

[64] Law Concerning Archaeological Monuments, Museums, and Documents, Libyan Arab Jamahiriya. Law No. 2 (March 3, 1983) (Libya) Art. 1 (A).

[65] *Id.* at Art. 3.

[66] *Id.* at Art 1 (Fourth).

[67] *Id.* at Art. 5.

[68] *Id.* at Art. 7.

[69] Katie A. Paul, *From Hearing to Signing: What's Happened While Libya Awaited Their MOU*, Antiquities Coalition,

Mar. 2, 2018.

[70] “*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/>

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

[72] Abdullah Benibrahim, *Libya’s Antiquities Department refutes UNESCO report on Leptis Magna*, Libya Observer, <https://www.libyaobserver.ly/culture/libyas-antiquities-department-refutes-unesco-report-lepits-magna>, Last visited July 8, 2017.

[73] Libyan authorities issue international circular on looted antiquities from Libya, <http://www.embassyoflibyadc.org/libyan-authorities-issue-international-circular-on-looted-antiquities-from-libya/>, last visited 07/09/2017.

[74] Press Release, U.S. Department of State, United States and Libya Sign Cultural Property Protection Agreement (Feb. 20, 2018), <https://www.state.gov/r/pa/prs/ps/2018/02/278502.htm>.

[75] Libyan Import Restrictions, Sec. II B (6).

[76] Libyan Import Restrictions, Sec. II (H)(1).

[77] Libyan Import Restrictions, Sec. I B (2).

[78] Josefin Dolsten, *US agrees to Libyan request that activists say prevents Jewish artifacts from leaving the country*, JTA, Feb. 22, 2018, <https://www.jta.org/2018/02/22/news-opinion/united-states/us-agrees-to-libyan-request-that-activists-say-prevents-ancient-jewish-artifacts-from-leaving-the-country>; Josefin Dolsten, *US accused of allowing Libya to keep seized Jewish property*, Times of Israel, Feb. 23, 2018, <https://www.timesofisrael.com/us-accused-of-allowing-libya-to-keep-seized-jewish-property/>.

[79] JTA, *Why Jews From Libya Are Worried About the Fate of the Country’s Jewish Artifacts*, Haaretz (Jly 26, 2017), <https://www.haaretz.com/archaeology/MAGAZINE-why-jews-from-libya-are-worried-about-the-fate-of-the-countrys-jewish-artifacts-1.5435143>

[80] *Jewish Communities of the World* at 101 (Anthony Lerman, ed. 1989).

[81] David Matas, *Aftershock: Anti-Zionism & Anti-Semitism* 162 (2005); See also James Kirchick, *The Right to Return*, Tablet Magazine, Sept. 2, 2011, <http://www.tabletmag.com/jewish-news-and-politics/76721/right-of-return>.

[82] A 1957 law prohibited anyone in Libya from contracting with anyone in Israel. A 1958 law dissolved the Jewish Community Council. A 1961 Law provided that only Libyan citizens could transfer real property—and only six Jews have been identified for being granted Libyan citizenship. Law No. 6 of 1961 Concerning the Sequestration of the Properties of Some Israelites” (enacted on March 21, 1961): “All property and possession in Libya belonging to bodies or individuals residing in Israel or belonging to her by reason of their nationality or working on her [Israel’s] account are placed under sequestration.” Michael Fischbach, *Jewish Property Claims Against Arab Countries* 74-75 (2010).

[83] Michael Fischbach, *Jewish Property Claims Against Arab Countries* 75 (2010). However, Jews were later allowed to expatriate £L300 (\$840).

[84] *Id.*

[85] *Id.* at 78.

[86] Personal communication, email describing seeing “big boxes of Jewish bones taken from the Jewish cemetery” in Benghazi, from David Gerbi to Kate Fitz Gibbon, July 18, 2017.

[87] *Id.* at 78.

[88] Inigo Gilmore, *Libyan Jews claim £100m for seized wealth*, The Telegraph, Jan. 11, 2004, <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/1451413/Libyan-Jews-claim-100m-for-seized-wealth.html>.



Moise Darmon sewing in a shoe-making workshop in Media, Algeria. Moise, born in 1887, was killed in World War I. Website of Algerian Jewry, <http://www.yahadut-algeria.co.il/>.

[89] James Kirchick, *The Right to Return*, Tablet Magazine, Sept. 2, 2011, <http://www.tabletmag.com/jewish-news-and-politics/76721/right-of-return>.

[90] CCP Staff, Now That Jews are Gone, Egypt Says it will Restore Sites, Cultural Property News, May 27, 2017, <https://culturalpropertynews.org/now-that-jews-are-gone-egypt-says-it-will-restore-sites/>

[91] Samir Samir, Jews of Egyptian descent petition Sisi to digitize records, Cairo Post, 2/21/2016, <https://nbc.com/2016/02/21/jews-of-egyptian-descent-petition-sisi-to-digitize-identity-records/>

[92] 124 News, "Egypt's Jewish Literary Heritage in danger of being forgotten," 12/20/2015, <https://www.i24news.tv/en/news/international/middle-east/97298-151229-egypt-s-jewish-literary-heritage-in-danger-of-being-forgotten>. When asked about the books in the Jewish Library's future, Mohamed Abdel-Latif, head of Islamic, Coptic and Jewish Antiquities Section of the Ministry of Antiquities, said that "The body authorized to be responsible for Jewish books and manuscripts is the Ministry of Culture." Culture minister, Helmy al-Namnam then stated that "there is nothing called 'Jewish books in Egypt,' the books scientifically should be classified as Arabic, Persian, Turkish, etc."

[93] 25% of restoration of Alexandria Eliyahu Hanavi Synagogue completed, Al-Masry Al-Youm, Egypt Independent, <http://www.egyptindependent.com/25-of-restoration-of-alexandria-eliyahu-hanavi-synagogue-completed/>

[94] Sarah El Deeb, Egyptian Jewish leader buried in cemetery she tried to restore, Times of Israel, 4/19/2013, <https://www.timesofisrael.com/egyptian-jewish-leader-buried-in-cemetery-she-tirelessly-tried-to-restore/>

[95] Jacob Wirschafter, Egypt plans to restore Alexandria synagogue in bid to promote diversity, USA Today, July 27, 2017, <https://www.usatoday.com/story/news/world/2017/07/27/egypt-plans-restore-alexandria-synagogue-bid-promote-diversity/517356001/>. The efforts were speculated to be part of Egyptian President Abdel-Fattah el-Sissi's attempts to ameliorate and promote the public understanding of "diversity" after a series of bombings in minority communities carried out by the Islamic State.

[96] Remarks by Vice President Mike Pence to Members of the Press Before Departing Cairo, Egypt, 1/20/2018,

<https://www.whitehouse.gov/briefings-statements/remarks-vice-president-mike-pence-members-press-departing-cairo-egypt/>

[97] The Looting in Egypt has Increased, ECHO, 3/18/2011, <http://www.e-c-h-o.org/news/increasedlooting.htm>

[98] Emmanuel Parisse, Egypt's last Jews aim to keep heritage alive, The Times of Israel, Mar. 26, 2017, <https://www.timesofisrael.com/egypts-last-jews-aim-to-keep-alive-heritage/>;

[99] Egyptian Law on the Protection of Antiquities, Law No. 117, art. 6 (1983).

[100] However, the definition of “antiquity” also includes more recent objects that fits these categories even if it does not fall within that timeframe, “where the Prime Minister so decides.” *Id.* at art. 1.; art. 2.

[101] Memorandum of Understanding Between the Government of the United States of American and the Government of the Arab Republic of Egypt Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of the Arab Republic of Egypt, Nov. 30, 2016.

[102] 81 Fed. Reg at 87,809, sec. X. “Coptic Paintings” and mosaics that contain “religious images and scenes of Biblical events” are also protected. Sec. XI (F); Sec. XII.

[103] *Id.* at XIII.

[104] *Id.*

[105] *Id.* at Art. II (3).

[106] Import Restrictions Imposed on Certain Archaeological Material From Egypt, 81 Fed. Reg. 87,805 (Dec. 6th 2016) (to be codified at 19 C.F.R. pt.12).

[107] Fatima Mohie-Eldin, *Egypt's Jewish Community Struggles to Retain Its Cultural Heritage*, Muftah, Apr. 21, 2017, <https://muftah.org/egypts-jewish-community-struggles-retain-cultural-heritage/#.WqchopPwa2w>.

[108] *New head of Egyptian Jewish community: Zionism is racism*, Times of Israel, July 18, 2013, <https://www.timesofisrael.com/new-head-of-egyptian-jewish-community-zionism-is-racism/>.

[109] Niveen Gnoheim, *Magda Haroun: The Egyptian Jewish Community's Vibrant Past and Macabre Present*, Cairo Scene (Feb. 4, 2016), <http://www.cairoscene.com/In-Depth/Magda-Haroun-Egypt-Jewish-Community-s-Vibrant-Past-and-Macabre-Present>.

[110] The Heliopolis Heritage Photography Exhibition and Performance by Saleeb Soufi group, December 9, 2017.

[111] Wirtschafter, *supra* note 93.

[112] Nebi Daniel Association, <http://www.nebidaniel.org/registres.php?lang=en>

[113] Fahmy was Egyptian ambassador to the United States from 1999 to 2008. He served as Egypt's Minister of Foreign Affairs from 2013 to 2014.

[114] While the Ben Ezra Synagogue in the area of Fustat was renovated decades ago (with a U.S. family foundation funding) and is regularly open to visitors, and specific projects have been liberally funded by the Egyptian government, other sites are inaccessible to tourists and plans for building a museum of Egyptian Jewish heritage in a synagogue with outside funds have not been approved by the Egyptian government. See also: Letter from Nabil Fahmy to Rabbi Shimon Haj Allouf, June 26, 2000, http://www.hsje.org/library/correspondence/Mubarak/ambassador_reply62600.pdf.

[115] *Id.*

[116] Emmanuel Parisse, Egypt's last Jews aim to keep heritage alive, The Times of Israel, Mar. 26, 2017, <https://www.timesofisrael.com/egypts-last-jews-aim-to-keep-alive-heritage/>; *Muslims in Egypt are trying to preserve its Jewish heritage*, The Economist, Sept. 9, 2017, <https://www.economist.com/news/middle-east-and-africa/21728590-egypts-leaders-have-increased-their-outreach-shrinking-jewish>.

[117] *Id.*



*Shofar for the Sabbath: Yemenite Jew, 1934-1939, Matson Collection, Library of Congress
Prints and Photographs Division, Washington, D.C.*

[118] Antiquities Law, Legislative Decree no. 222, art. 4 (1963) (Syria).

[119] Like the Egyptian law, the Antiquities authority may include as antiquities belonging to a later date if they “possess historical, artistic, or national characteristics.” *Id.* at art. 1.

[120] Pub. L. No. 114-151, 130 Stat. 369 (2016).

[121] Pub. L. No. 114-151 specifically states that “the Government of Syria is incapable at the time a determination [sic] under such subparagraph is made, of fulfilling the requirements to request an agreement under section 303 of the Convention on Cultural Property Implementation Act (19 U.S.C 2602), including the requirements under subsection (a) (3) of that section.

[122] See e.g. U.S. Gov’t Accountability Off., GAO-16-873, Cultural property: Protection of Iraqi and Syrian Antiquities (2016).

[123] *Import Restrictions Imposed on Archaeological and Ethnological Material of Syria*, 19 C.F.R. 12 IX (A) & (B) (2016).

[124] *Id.* at X (A)(2).

[125] *Id.*

[126] Lerman, *supra* note 80, at 153-54.

[127] *Encyclopedia of Human Rights* at 1427 (Edward H. Lawson, Mary Lou Bertucci, ed. 1996)

[128] Ronen Bergman, *A High Holy Whodunit*, New York Times (July 23, 2012), <http://www.nytimes.com/2012/07/29/magazine/the-aleppo-codex-mystery.html>.

[129] From Maimonides to Brooklyn: the Mystery of the Aleppo Codex, JTA (Dec. 10, 2007), <https://www.jta.org/2007/12/10/archive/from-maimonides-to-brooklyn-the-mystery-of-the-aleppo-codex>.

[130] *Id.*

[131] Daniel Estrin, *In the beginning there was a dispute over Hebrew Bibles...there still is*, The Independent (Dec. 9, 2014), <http://www.independent.co.uk/news/world/middle-east/in-the-beginning-there-was-a-dispute-over-hebrew-biblesthere-still-is-9913609.html>. The reason for such subversive action was in part informed by travel restrictions the Syrian government placed on Jews and also “so as not to draw the ire of Syria, Israel’s longtime foe.

[132] *Import Restrictions Imposed on Archaeological and Ethnological Material of Syria*, 81 Fed. Reg. 53,916 Aug. 15, 2016 (to be codified in 19 C.F.R. 12).

APPENDIX 1

Letter to Secretary of State Mike Pompeo Regarding Cultural Property Agreements

December 9, 2018
The Honorable Michael Pompeo
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Pompeo,

On behalf of the undersigned Jewish organizations we are writing to encourage the State Department and the Bureau of Educational and Cultural Affairs to explicitly recognize the rights of Jewish and minority heritage when negotiating future cultural property agreements with countries in North Africa and the Middle East. During the 20th century, 850,000 indigenous Jews from the region were ethnically-cleansed or forced to flee lands their ancestors lived in for over two-thousand years. Virtually all of their personal and communal property was confiscated. The dispossession and denationalization of nearly one million Jewish refugees was done under the color of law and today there are very few Jews remaining in most of these countries.

The State Department has signed Memoranda of Understanding (MOUs) between the United States and other governments that deny Christians and Jews from Arab countries the right to their historic heritage. The Cultural Property Implementation Act (CPIA) was enacted to deter the looting of archeological sites by enacting temporary import restrictions on significant cultural items as part of a multilateral effort. Unfortunately, over time these restrictions have expanded beyond both the law's intent and its legal authority.

We recognize the importance of these MOU agreements in deterring the pillaging of archaeological and ethnological materials. However, an additional goal of these agreements, as noted in the Convention on Cultural Property Implementation Act, is to, "increase international access to cultural property." This has a particular relevance with regard to Jewish heritage, which encompasses both moveable (e.g., Torah scrolls, ritual objects, libraries, communal registers) assets and immovable (e.g., synagogues, cemeteries, religious shrines) assets. Regrettably, it is not safe – and in many cases forbidden by national law – for Jewish refugees from Arab countries to return to the countries that exiled them.

On July 31st, 2018, during a public hearing at the Department of State on the Request of the Government of the People's Republic of Algeria for U.S. import restrictions on virtually the entire cultural heritage of Algeria, representatives of exiled Middle Eastern Jews urged the Cultural Property Advisory Committee to the President to withhold these import restrictions. Algeria has failed to meet the criteria set for restrictions under the Cultural Property Implementation Act. It would be unconscionable for the United States to give the Algerian government authority and control over the property of its oppressed and exiled Jewish and Christian citizens.

As MOU agreements demand that the governments themselves show they are taking measures to preserve and protect the heritage in their own countries, North African and Middle Eastern countries, including Algeria, requesting MOUs should be asked to present an inventory of remaining Jewish moveable and non-movable patrimony and an account of what they are actively doing with respect to the care of synagogues, cemeteries and other sites and items of Jewish and Christian heritage.

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.

It is more important than ever for the United States to stand in solidarity and defense of Christian, Jewish and other religious minorities in the Middle East and North Africa, to ensure that these living communities are not deprived of their rich cultural heritage. Thank you for your attention. We look forward to remaining in communication with the State Department on this crucial issue.

Thank you,

Gina Waldman
President, JIMENA

Sarah Levin
Executive Director, JIMENA

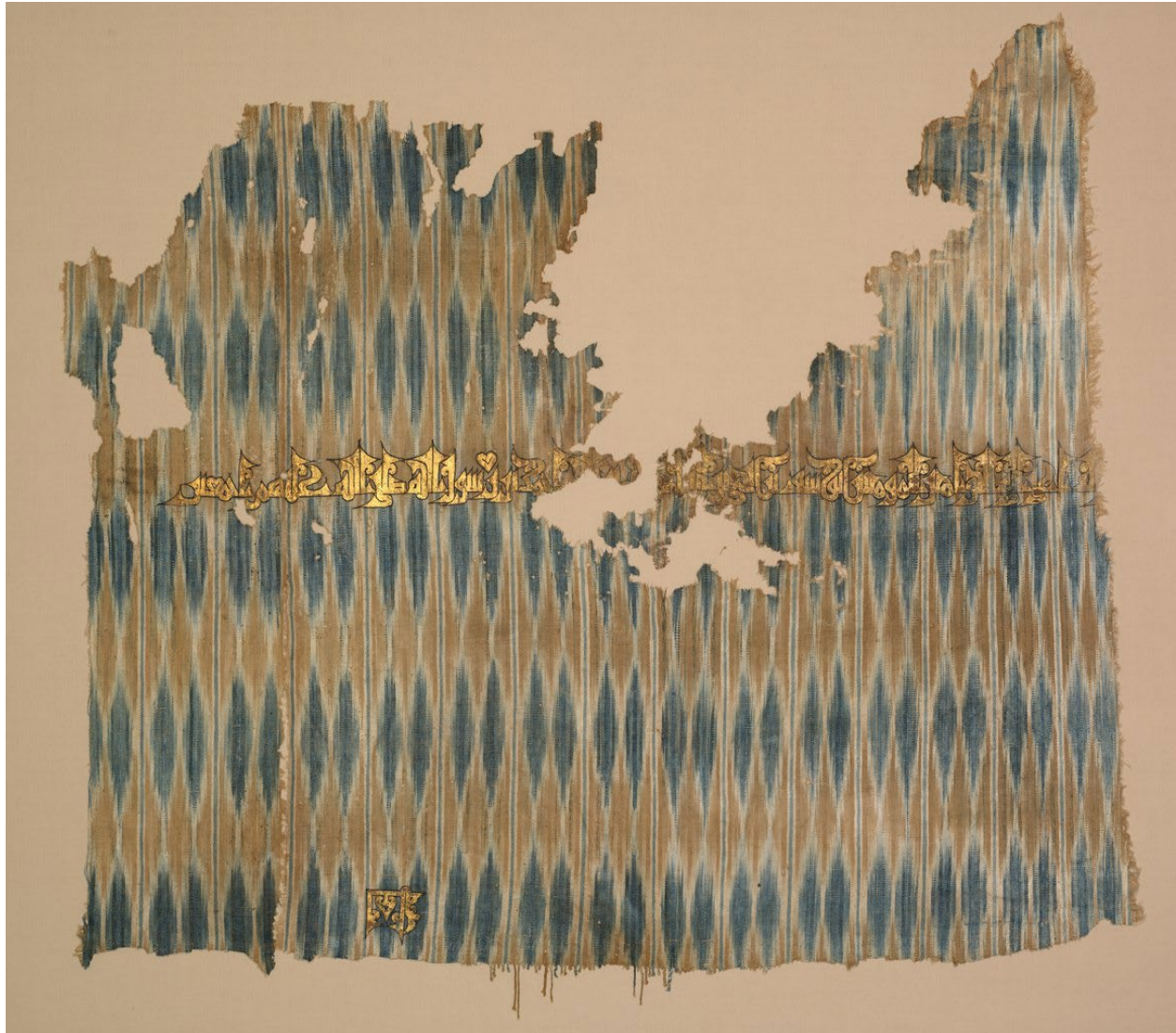
Organizations:

A.A. Society
The American Sephardi Federation
ADL: The Anti-Defamation League
B'nai B'rith International
Centre for Israel and Jewish Affairs (CIJA)
Conference of Presidents of Major American Jewish Organizations
Harif: UK Association of Jews from the Middle East and North Africa
Historical Society of Jews from Egypt
Iranian American Jewish Federation (IAJF)
JIMENA: Jews Indigenous to the Middle East and North Africa
JJAC: Justice for Jews from Arab Countries
The Lawfare Project
Morial: French Association of Algerian Jews
Sephardic Educational Center
Sephardic Legacy Project
Simon Wiesenthal Center
World Jewish Congress North America
Yemenite Jewish Federation of America

APPENDIX 2

CCP & GHA Testimony on Yemen's Request for Cultural Property Restrictions

Written Testimony Submitted to Cultural Property Advisory Committee, Department of State Proposed Agreement Between U.S. and Yemen



Ikat tiraz textile. Yemen, San'a', Zaydi Imam period, between 960 and 980, Resist-dyed warp (ikat); plain weave with inscription: cotton and gold leaf. This text, written in kufic script with gold paint outlined in black, identifies a ruler of the Yemen: ". . . [a]l-Da'i ila al-Haqq, Commander of the Believers, Yusuf b. Yahya b. al-Nasir li-Din Allah Ahmad, son of the apostle of God, may God bless the all." Cleveland Museum of Art, Accession number 1950.353

Introduction

The 1983 Cultural Property Implementation Act (CPIA) is the U.S. implementing legislation for the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The CPIA was intended to balance U.S. interests in free trade and access to art with source country claims to heritage and the need to protect archaeological sites from looting. In the CPIA, Congress reserved judgment on the scope of import restrictions to the U.S. Instead, the law allows targeted export restrictions on materials currently threatened by looting and requires that important market nations act together to similarly block imports.

The Cultural Property Advisory Committee (CPAC) provides recommendations under the CPIA. In order to recommend



Jewish cemetery at the town of Azzefoun, Algeria, where more than 300 graves were desecrated in 2015. The former Jewish community in the town ceased to exist in the early 1960s when they fled to France. Circa 10/30/2015.

import restrictions, CPAC must find that the request satisfies all four requirements set forth under the law. The requirements are:

- *The cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party.*
- *The State Party has taken measures to protect its cultural patrimony.*
- *The application of the requested import restriction would be applied at the same time by other nations with a significant import trade in the restricted objects, and would have a substantial effect in deterring a serious situation of pillage – – and other remedies are not available.*
- *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.*

For almost 20 years, critics of the operation of CPAC by the Department of State (including a number of former members of CPAC) have argued that the agreements and import restrictions under the CPIA are overbroad and have disregarded the requirements of the law.

According to cultural property law specialist James Fitzpatrick, since the transfer of the CPIA's administration to the US Department of State in 1999, the State Department's decisions have been:

- *Essentially to read the requirement that other nations impose similar blockades out of the Act;*
- *To promulgate across-the-board embargoes extending to a nation's entire cultural history, or thousands of years of it;*
- *To disregard the requirement that a U.S. embargo would be efficacious by permitting a requesting nation to sell in its markets the same items it wants to deny to the U.S. market;*
- *To conduct all its proceeding in secrecy, denying the public the opportunity to evaluate its activities.*

(James F. Fitzpatrick, Falling Short – the Failures in the Administration of the 1983 Cultural Property Law, 2 ABA Sec. Int'l L. 24, 24)



Jewish immigrants departing Yemen via emergency airlift, 1951. Courtesy Israel National Photo Collection. Beit Jagron, Jerusalem, Israel.

Testimony

Re Federal Register, Oct. 2, 2019 (Volume 84, Number 191 (Page 52551))

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)[1] 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)[2] 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.

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.[3] 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.[4] 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.

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 4th 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. [5]

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



Plaque depicting Moses Maimonides in the synagogue of Moses Maimonides (Moses ben-Maimon), Jewish quarter, el-Muski, Cairo, Egypt, Author Roland Unger, 7 February 2006, Creative Commons Attribution-Share Alike 3.0 Unported license.

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).[6] 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.

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 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.[7] Congress spoke of archeological objects as limited to “a narrow range of objects...”[8] 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...”[9]”

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.[10]

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.[11] Thirty-two sculptures were sold at Christie’s, almost all in 2009 and 2010, the last one in 2014, again, before the Yemen war began, and most from much older collections.[12] 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 Christie’s auction sales of Yemenite material may be found at these links:

- Sotheby’s All Sales of South Arabian (Yemen) Art
- Christie’s All Sales South Arabian (Yemen) Art

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. [13] 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.



Algerian Jew, 1901-1906, source Jewish Encyclopedia. Public domain.

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 Be Wary 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. 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[14], 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:

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.)

Statement by Deborah Lehr in NPR interview, January 6, 2019:[15]

"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 benefiting. 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 benefiting 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." [16] (See also, Bearing False Witness: The Media, ISIS, and Antiquities, Cultural Property News, December 1, 2017.[17]) 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[18]:

"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:[19]

"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.[20] Local fighters had been leaving 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 Houthi from Aden. The National Museum of Aden[21] 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[22], a joint Italian -Yemeni



Postcard, Tlemcen, Interior de la Synagogue du Raab.
Courtesy National Library of Israel.

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 20th century, as well as a substantial collection of South Arabian statuary.[23] 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.[24]

“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 statistics based on the country of shipment.^[25] 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^[26] 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,^[27] 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



*A Yemenite Habani Woman in
her traditional dress and wearing
handcrafted silver jewelry.
Author Zoltan Kluger (1896–
1977), Wikimedia Commons,
public domain.*

and artifacts through the 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. [28] 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 Taez, in southwestern Yemen, was bombed by Salafist gunmen. The mosque was the most famous of Taez' antique buildings, known for its association with Yemen's Sufi tradition. Sufism's mystical teachings are rejected by the ultra-conservative Sunni Salafist movement.[29]

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 and 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.[30] 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.[31] 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." [32]

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[33] logistical, intelligence and moral support for the Saudi air campaign....This Saudi cultural vandalism is hard to distinguish from the Islamic State's." [34]

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.[35] 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.

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."[36]

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.[37] 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.[38]

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." [39]

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.

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 traveling 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 Yemen 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. [40]

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.

Kate Fitz Gibbon
Executive Director, Committee for Cultural Policy, Inc.

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APPENDIX 3

SOTHEBY'S ALL SALES OF SOUTH ARABIAN (YEMEN) ANCIENT ART
2009-2018

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
Egyptian, Classical, and Western Asiatic Antiquities	63	6/3/2015	A South Arabian Limestone Funerary Stele	1 BC	3,750	Of rectangular form carved in high relief with the head of a man, with long straight nose, small ears, and large eyes recessed for inlay, his name "Rathad'il" carved below, Height 11 1/2 x 7 1/4 in. 29.5 x 18.5 cm
Egyptian, Classical, and Western Asiatic Antiquities	61	6/3/2015	Three South Arabian Funerary Inscriptions, Qataban	3 BC - 1 BC 20,000	20,000	PROPERTY FROM THE AYLWARD FAMILY COLLECTION, UNITED KINGDOM, comprising three bases with mortises on top for insertion of trapezoidal stelai, one fragmentary in alabaster finely engraved "Ghaythat of Raf'an," a smaller complete alabaster one roughly engraved "Sahatum of Waqihat," and a fragmentary one in limestone engraved "Banyanum of Yath'an" in tall elongated characters. 3 3/4 x 6 3/4 , 3 1/2 x 4 3/4 , 2 3/8 x 2 7/8 in. 9.5 x 17 , 9 x 12.2, and 6 x 7.6 cm, respectively
Egyptian, Classical, and Western Asiatic Antiquities	62	6/3/2015	A South Arabian Alabaster Funerary Stela, Qataban	3 - 2 BC	60,000	Carved in high relief with the figure of a man standing with his hands resting on his abdomen, and wearing a short tunic and long-sleeved shirt, his name and lineage "Aliyyan of Hirran" engraved on the plinth below, the reused panel with two long grooves and a two-character inscription (mim and alif) on the reverse. Height 9 in. 22.9 cm
Egyptian, Classical, and Western Asiatic Antiquities	14	12/10/2009	A South Arabian Alabaster Head of a Man, Qatabân	2 - 1 BC	22,500	With naturalistic features, short moustache in shallow relief, eyes recessed for inlays, eyebrows with remains of inlay, and finely carved ears. Height 6 3/4 in. 17.3 cm.
Antiquities	66	12/10/2008	A South Arabian Bronze Head of a Bull	1 BC - 1 AD	10,625	PROPERTY FROM A NEW YORK PRIVATE COLLECTION, with wide upturned horns each with striated markings at the base, large eyes inlaid with remains of several materials, and short erect ears, the triangle on the forehead, contour lines above the eyes, and the muzzle all with stippled detail, a ribbed suspension loop above the neck, the back open to the interior and filled with core material. Height 3 1/8 in. 8 cm.; span of horns 6 1/16 in. 15.5 cm.

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
Antiquities	82	12/10/2008	Four South Arabian Antiquities	2 BC - 1 AD	3,750	PROPERTY FROM AN AMERICAN PRIVATE COLLECTION, comprising a Qatabanite limestone base engraved in front with two lines of South Arabic inscription reading "Hâni'um, (of the) Kars (family)," the rectangular slot on top with remains of the alabaster stele, an alabaster head of a bull from a funerary stele, a bronze applique in the form of a double shield with bosses centering a bull's head in relief, and a bronze applique cast in relief with the head of a deity wearing a diadem. 3 5/8 , 3, 4 5/8 , and 2 3/4 in. 9.2, 7.6, 12.2, and 7 cm.
Antiquities	64	12/10/2008	A South Arabian Alabaster Head of a Man, Qataban	1 BC - 1 AD	5,625	PROPERTY FROM A CALIFORNIA PRIVATE COLLECTION, with tapering columnar neck, oval face with small mouth, unarticulated eyes perhaps formerly painted, long rectangular nose with grooved nostrils, overhanging brows, and short stippled beard and moustache. Height 8 1/2 in. 21.6 cm
Antiquities	65	12/10/2008	A South Arabian Alabaster Head of a Man	3 BC - 1 AD	10,625	PROPERTY FROM AN AMERICAN PRIVATE COLLECTION, of highly simplified form with flat facial plane, small grooved mouth, long rectangular nose, and prominent eyes beneath the straight overhanging brows. Height from modern base 6 in. 14.2 cm.
Antiquities	67	12/10/2008	A South Arabian Alabaster Funerary Stele, Qataban	1 BC - 1 AD	43,750	PROPERTY FROM AN AMERICAN PRIVATE COLLECTION, of slightly flaring rectangular form, carved in high relief with the head of a bull, the eyes recessed for inlays under the ribbed brows, the base engraved with one line of South Arabic inscription translating, "Shâwsan (from the tribe of) Adhâb." American private collection, Jidah, Saudi Arabia, until 1969 by descent to the present owner.

APPENDIX 4

CHRISTIE'S SALES OF SOUTH ARABIAN (YEMEN) ANCIENT ART
2009-2018

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
3403	84	12/11/2014	South Arabian Alabaster Head Of A Man	1 BC - 1 AD	27,500	With a flaring neck and an oval face, the thin grooved brows arching over thickly-lidded, large, almond-shaped eyes, recessed and once inlaid, with a long, triangular nose, the thin lips straight, his mustache and beard indicated by three rows of stippling, the earlobes pierced, the top and back of the head roughly finished, 10½ in. (26.7 cm.) high, Provenance Private Collection, Germany, 1975. <i>Antiquities</i> , Sotheby's, New York, 7 June 2005, lot 60., Private Collection, U.S., 2005-2012. A Distinguished Private Collection; Christie's, New York, 8 June 2012, lot 50
2856	58	6/5/2014	A South Arabian Alabaster Stele	1 BC	47,500	Rectangular in form, sculpted in high relief with a standing woman clad in a long A-line tunic with a fringed collar, her hands clasped at her waist, wearing two bracelets on each wrist, her heart-shaped face with large, bulging almond-shaped eyes, the pupils deeply drilled, the eyebrows thin grooves, the arching brow merging with the bridge of the long triangular nose, with a small mouth and rounded chin, the center-parted hair likely originally finished in plaster, perforated for attachment above each shoulder, 16 1/8 in. (41 cm.) high, Provenance , D. Nasser, New York., David Benaim, New York, 1994.
2709	693	6/6/2013	A South Arabian Limestone Pillar Stela For Yahyum	1 BC	15,000	Rectangular in form, sculpted on the upper end with the head of a man in relief, his beard neatly trimmed around the edges of his spade-shaped face, with a straight mouth, the brows in relief merging with the long triangular nose, the almond-shaped eyes inlaid with white stone, additional (now-missing) inlay for the pupils, with an eight letter inscription below in Old South Arabian identifying the deceased as "Yahyum (son of) Masal", 17 in. (43.2 cm.) high, Provenance Private Collection, France, 1970s., D. Nasser, New York, 1980s-1991
2793	694	6/6/2013	A South Arabian Alabaster Head Of A Man	1 BC - 1 AD	7,500	The broad spade-shaped face with a prominent nose and thick overhanging brow, the straight mouth with full lips, the long neck tapering slightly, the back of the head and neck roughly finished, likely once set into a niche, 9 in. (22.9 cm.) high, Provenance Private Collection, New York, mid 1960s. with Fortuna Fine Arts, New York, 1995.

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
2605	180	12/5/2012	A South Arabian Bronze Inscriptional Plaque	4 BC	50,000	With a raised plain border, each end with recessed panels enclosing two standing male figures in relief with a rosette in between, each with one hand raised in adoration and one holding an offering-vessel, with shoulder-length hair and a long beard, the main panel with ten lines of Old South Arabian text in raised relief, reading: "Maadi-karib and Ammi-dhakar, the two sons of Il-'az(z) son of Barantum, have dedicated (to) Hawkum an offering in bronze, from the dues and tithes that they paid as tribute and tithes to Hawkum, from they two's pastures; the... of they two's protector(?) Hawkum, by his oracle, when he safeguarded them both, through ("from") the instructions that he enjoined upon them both; - and may Hawkum continue to keep them both (safe) from all evil and harm. They have entrusted to Hawkum both of their lives, both their abilities, and all their two's offspring, and their possessions: - by 'Amm, and by Anbay, and by Athtar, he of Hatibum, and by Dhat-Santim, by Dhat-Zahran, and by their tribe in (its) entirety, (even?) Dhu-Mariyantum," with four perforations near the perimeter, 32½ in. x 16½ in. (82.6 cm. x 41.9 cm.), Provenance, Durrenberger Collection, Munich, 1961. Private Collection, Munich, 1977-1981.
2565	49	6/8/2012	A South Arabian Bronze Erotic Group	2 BC - 1 BC	6,000	Depicting a lovemaking scene, the man standing with his legs straight, his feet together, his left hand holding the woman's left buttock, his right hand at the middle of her back, the woman with her legs wrapped around the hips of her lover, her right arm around his waist, her left hand resting on his right shoulder, with naturalistic details for the anatomy, 3 3/8 in. (8.6 cm.) high, Provenance, Anonymous sale; Christie's, New York, 9 December 1999, lot 393.
2565	50	6/8/2012	A South Arabian Alabaster Head Of A Man	1 BC - 1 AD	10,000	With a flaring neck and an oval face, the thin grooved brows arching over thickly-lidded large almond-shaped eyes, recessed and once inlaid, with a long, triangular nose, the thin lips straight, his mustache and beard indicated by three rows of stippling, the earlobes pierced, the top and back of the head roughly finished, 10½ in. (26.7 cm.) high, Provenance, Private Collection, Germany, 1975., Anonymous sale; Sotheby's, New York, 7 June 2005, lot 60.

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
2565	51	6/8/2012	A South Arabian Alabaster Figure Of Yahmi-Il	3 BC - 1 AD	10,625	Standing with his feet parallel on an integral rectangular plinth, his arms held at his sides with the elbows bent acutely, the forearms projecting forward, both hands fisted, wearing a calf-length garment, a sword secured in his belt, his broad oval face with a small mouth, a broad triangular nose and large almond-shaped eyes, the pupils incised, with arching brows, the beard rendered by three rows of stippling, the hair roughly finished at the top and back, an inscription on the front panel of the plinth identifying him as Yahmi-il, 12¾ in. (32.4 cm.) high, Provenance, Private Collection, Mainz, 1960s., Private Collection, London, 1970s-1990s. Private Collection, Germany, 2000s
2490	23	12/7/2011	A South Arabian Limestone Pillar Stela For Abdu	1 BC - 1 AD	11,875	Rectangular in form, sculpted on the upper end of the obverse with the head of a man in relief, his closely-cropped hair square along his forehead, with sloping cheeks and a square jaw, framed by his ridged beard, with a thin straight mouth, slightly raised cheeks, and a long straight angular nose, his almond-shaped eyes raised, the pupils inlaid in dark stone, the ears formed of concentric half-circles, a three letter inscription below in Miniac identifying the deceased as "Abdu," preserving some red pigment throughout, 13 7/8 in. (35.2 cm.) high, Provenance, Art Market, U.A.E., 1990.
2491	320	12/7/2011	Ten South Arabian Gold Necklace Elements	5 BC	22,500	All with ribbed tubular suspension loops with raised collars, granules below, including two fanning lotus blossoms, two feline heads, two ram heads, two palmettes, and one horned bull head, and a Neo-Assyrian banded agate stamp seal, cut down and adapted as a pendant, the flat oval stone engraved with a bearded hero clad in a fringed cloak, a sickle in his lowered hand, gripping a rearing stag with his other hand, encircled in a plain bezel fringed with granules, Largest: 1 in. (2.5 cm.) long, Provenance, Private Collection, Ashdod, Israel, late 1980s
2491	321	12/7/2011	Sixteen South Arabian Gold Beads	5 BC	17,500	Including fifteen biconical beads with seven large granules encircling each end, and one pendant bead with a ribbed tubular suspension loop with similar granules encircling each end, a ribbed rectangular projection below, with a pyramid of granules on each side, and a large domed disk, ribbed on the sides, with a rounded border, terminating below in a single large sphere, Pendant bead: 1 7/16 in. (3.7 cm.) long, Provenance, Private Collection, Ashdod, Israel, late 1980s.

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
2450	no #	6/9/2011	A South Arabian Alabaster Female Figure	3 BC - 1 BC	37,500	Standing with her feet parallel on an integral rectangular plinth, a tang below, her arms held at her sides with the elbows bent acutely, the forearms projecting forward, the right hand open, the left fist, wearing a calf-length garment, her broad oval face with a pointed chin, a small mouth, and a slender triangular nose, the large almond-shaped eyes inlaid with contrasting white stone, further inlays for the pupils now missing, the arching brows grooved, the hair roughly finished at the top and back, flaring out below the ears, 16¼ in. (41.3 cm.) high, excluding tang, Provenance, Private Collection, Germany, 1965.
2450	31	6/9/2011	A South Arabian Alabaster Funerary Stele	1 BC - 1 AD	40,000	Rectangular in form, the upper edge concave, a bull head in high relief on the upper end of the obverse, with short protruding horns, prominent ears, large bulging lidded eyes and a rounded muzzle, a two-line inscription in the Qatabanic dialect inscribed on the raised rectangular section at the lower end, reading: "Memorial of Haliyrit dhat Shahaz", 21 in. (53.3 cm) high, Provenance Private Collection, Belgium, 1968.
2450	32	6/9/2011	A South Arabian Alabaster Head Of A Man	1 BC - 1 AD	18,750	With a long tapering neck and a thin oval face, the brows raised and arching slightly, his large eyes inlaid with contrasting white stone, the pupils once further inlaid, with a long, triangular nose, the thin lips straight, his sharp beard sculpted with the contours of the chin and cheeks, the top and back of the head roughly finished, with traces of plaster throughout, 7¾ in. (19.7 cm.) high, Provenance, Private Collection, Germany, 1968.
2364	56	12/9/2010	A South Arabian Alabaster Anthropomorphic Stele	1 BC - 1 AD	74,500	In the form of a stylized rectangular face, with the facial features sculpted in raised relief, including large thickly-lidded eyes that flare at the inner and outer corners, the prominent raised rectangular forehead merging with the bridge of the long triangular nose, the small mouth protruding, the top, sides, and back of the head roughly finished, 13¾ in. (34.9 cm.) high, Provenance, Private Collection, France, acquired in 1978.
2364	57	12/9/2010	A South Arabian Alabaster Stele	5 BC - 4 BC	25,000	In the form of a temple door, with two long rectangular triple-recessed panels, each centered by an arching vertical "handle," a bifurcated attachment framing a bovine head and an element composed of layered concentric circles, dentils along the upper edge, horizontal grooves above, 35 7/8 in. (91.1 cm.) high, Provenance, Private Collection, Germany, acquired in 1970.

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
2364	59	12/9/2010	A South Arabian Alabaster Head Of A Man	1 BC - 1 AD	7,500	With a long tapering neck and a thin oval face, the brows recessed, his large eyes inlaid with contrasting white stone, the pupils once further inlaid, with a long, thin triangular nose, the protruding lips pursed into a slight smile, his beard, mustache and hair of the brows indicated by thin incisions, the top and back of the head roughly finished, with traces of plaster throughout indicating that it was likely once set into a stele, 8 in. (20.3 cm.) high, Provenance, Private Collection, France, 1974.
2364	60	12/9/2010	A South Arabian Alabaster Lidded "Beehive" Jar	3 BC - 1 AD	12,500	Conical in form, on a flat base, tapering to the short cylindrical rim, the twin handles in the form of crouching lions, perforated horizontally, the domed lid surmounted by a standing lion, perforated horizontally, 10 in. (25.4 cm.) high, Provenance, Private Collection, France, 1975
2364	153	12/9/2010	A South Arabian Alabaster Stele	1 BC	40,000	Rectangular in form, with a stylized head in relief on the upper end, the tapering face with a rounded chin and raised lozenge-shaped lips, the long triangular nose merging with the heavy brows, the diamond-shaped eyes incised, a deeply-engraved inscription naming the deceased below, reading: Awsi-Athat, 14¼ in. (36.2 cm.) high, Provenance, Anonymous sale; Christie's, London, 14 July 1971, lot 257, with Michel Dumez-Onof, London, 1972.
2323	16	6/10/2010	A South Arabian Bronze Couple	2 - 3 AD	11,250	Cast with a lovemaking scene, the couple in embrace, the woman wearing a beaded bandolier across her back and hips, a striated skirt, and a bracelet, with an Old South Arabian inscription engraved across their backs, reading: "Mashmir Sibhan" on the male and "Hamat" or "Hamit" on the female, 5½ in. (14 cm.), Provenance with Ayoub Rabenou, France, 1970s.
2323	17	6/10/2010	A South Arabian Alabaster Bull	1-2 AD	6,000	Standing foursquare on an integral rectangular plinth, the muscular bovine with the tail hanging down below the edge of the plinth, with protruding ears and rounded horns, the triangular poll with incised zigzag, the almond-shaped eyes with recessed irises and ridged brows, wearing an incised collar fronted by a triangular pendant, 6 3/8 in. (16.1 cm.) long, Provenance, German Private Collection, 1978.
2323	18	6/10/2010	A South Arabian Alabaster Libation Table	1 BC	6,875	Rectangular in form, the recessed upper surface merging on one long side into three grooved runoff channels, each in the form of a stylized bull head, with bulging almond-shaped eyes and incised cylindrical snouts, 14 5/8 in. (37.1 cm.) wide, Provenance, French Private Collection, 1975.

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
2232	52	12/11/2009	A South Arabian Bronze Female Figure	1 BC - 1 AD	25,000	Hollow cast, standing with her bare feet hip-distance apart, wearing a tightly-fitted sheath, the belted bell-shaped skirt falling to mid-calf, an inscription incised along the front of the skirt, her rounded buttocks protruding below the arch in her lower back, her arms held forth, the hands fisted around now-missing attributes, her head frontal, her vertically-incised hair falling in a solid mass behind her ears and along either side of her neck, surmounted by a high crown, her triangular face with a prominent nose, a straight mouth and a rounded chin, the large oval eyes with pronounced brow ridge, tenons below the feet, 12 in. (30.5 cm.) high including tenons, Provenance, Belgian Private Collection, 1968.
2232	53	12/11/2009	A South Arabian Alabaster And Bronze Altar	5-3 BC	15,000	In the form of a temple façade, eight frontal ibex heads along the pediment, framed by stylized windows at the corners, the central triple-recessed element centered by a separately-made bronze votive offering comprised of a standing figure wearing a long pleated skirt, the arms outstretched, the legs placed into a thin rectangular alabaster plinth, the back of the altar protruding for placement, perhaps in a niche, 14½ in. (36.8 cm.) high, Provenance, French Private Collection, 1975. Anonymous sale; Boisgirard, Hôtel Drouot, 17 December 2008, lot. 15.

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
2232	54	12/11/2009	A South Arabian Bronze Votive Plaque	1 AD - 2 AD	13,750	Framed with a plain raised border on all four sides, with ten lines of Old South Arabian text in raised relief reading: "(1) Il-sharah of the clan Ma'sum has dedicated (to) his god and his lord Hawkum Nabat and the gods (2) who are from Shim'an, this bronze dedication (plaque), (just) as Hawkum had commanded by his oracle; - (3) because Il-sharah had set out on campaign via(?) the heights, and they did battle in (4) front of the town of Miryam-tum; and they had set out this text ("writings") and record, and what pertained to th(is) son of (the clan) (5) Ma'sum. And Il-sharah brought back the men of Hawkum, and sought (an oracular) response on his return (?) and (6) Hawkum made promise to Il-sha(7)rah by oracle, according as he (=Il-sharah) would offer to them (=the gods) the text and record. (So) he (=Il-sharah) made (8) the dedication; he dedicated what was required from him, such that(?) he should replicate it from the copy of his(?), as a good (9) outcome. And (so) they (=Il-Sharah and co.) have offered to them (the gods) the text and record (=this plaque). Il-sharah has entrusted (into the care of) Haw(10)kum and his (other) gods his family, his property, and (this) his dedication (plaque), safe from mishap(?)," with three perforations for attachment, and a raised X on the reverse, 14 in. (35.6 cm) high, Provenance with Elie Borowski, 1986.
2232	55	12/11/2009	A South Arabian Alabaster Ibex	1 AD - 2 AD	28,750	Standing on a high rectangular integral plinth, the plump body with short legs, the hooves incised, with long curving underslung horns, the triangular ears projecting below, bulging pellet eyes and a square beard, with a raised medial line vertically along the muzzle, 13 1/8 in. (33.3 cm.) high, Provenance M. Herinek, Vienna, 1980.

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
2174	40	6/3/2009	A South Arabian Bronze Bowl	1 BC - 1 AD	47,500	Hemispherical in form, decorated on the interior in repoussé and enhanced with incision with a repeating motif comprised of a standing figure in profile to the right wearing a kilt and an elaborate stepped headdress, a ritual bucket hanging from his lowered left hand, the right raised, alternating with a motif of animals or monsters flanking a tree of life, separated by a band of two wavy lines, including griffins with hedgehogs above, felines with rosettes above, bovines with busts of deities above, ibexes with a hedgehog, a bird and a snake above, goats with hares above, a band of guilloche encircling the bowl below the rim, a later, 3rd century A.D. inscription above one of the figures, reading: "hand (of) Dharihil Yashabul," guilloche around the tondo, with a star within a star encircled by petals, an inscription on the rim, reading: "Yabahal Siran dedicated (this);" the exterior with an incised decorative foliate band along a section below the rim, 10 in. (25.4 cm.) diameter; 3½ in. (8.9 cm.) high, Provenance, Hasan Kahn Monif, New York, 1960.
2174	42	6/3/2009	A South Arabian Bronze Votive Plaque	5 BC	6,000	Likely from the right-hand side-panel of a rectangular offering stand, cast with two registers in raised relief, each register with two male figures in right profile flanking a petalled rosette, the figures bearded, with a prominent nose and long wavy hair, each standing on a plinth with one leg forward, wearing a pleated kilt, the figure on the top left wearing baggy trousers, a ritual bucket in the extended left hand of each, the right arm raised in greeting, an Old South Arabian inscription along the border between the registers with three proper names, reading: "Ab-'alay, Aws-'azz, Kalban;" a square perforation along the top register for attachment, 11½ in. (29.2 cm.) wide, Provenance, Vienna Private Collection, 1980.
2174	43	6/3/2009	A South Arabian Alabaster Stele	5 BC - 4 BC	30,000	Preserving a temple façade with long rectangular triple recessed "windows," the two outer topped with pediments surmounted by upturned bovine horns, a decorative baluster across the top, 18 in. (45.7 cm.) high, Provenance Private Collection, late 1980s.
2174	44	6/3/2009	A South Arabian Alabaster Female Head	1 BC - 1 AD	16,250	The spade-shaped face with small fleshy lips and a triangular nose, the thin grooved brows arching over the almond-shaped eyes, the sclerae inlaid in limestone, additional inlays for the pupils now missing, the top and back of the head flat and roughly finished, the ears pierced, wearing ancient gold hoop earrings, possibly original, "Venus"-lines along the neck, 5 1/8 in. (13 cm.) high, Provenance with Elie Borowski, 1982.

SALE	LOT NUMBER	DATE	ITEM	DATE OF OBJECT	PRICE REALISED	DESCRIPTION
2174	45	6/3/2009	A South Arabian Limestone Pillar Stela For Aws Sayil	2 BC - 2 AD	43,750	Rectangular in form, sculpted at the upper end with a male head in high relief, the spade shaped face with a square jaw, bordered by a groove indicating the beard, the overhanging brows merging with the prominent triangular nose, the thick lips slightly parted, the ears in low relief, the almond-shaped eyes inlaid in shell(?), additional inlays for the pupils now missing, a Qatabanite inscription below identifying the deceased as Aws Sayil. 23 in. (58.4 cm.) high, Provenance French Private Collection, 1970s.
2174	46	6/3/2009	A South Arabian Alabaster Relief Fragment	2 AD	12,500	Depicting a scrolling vine in raised relief, emerging from a sunk triangle descending from the right corner of the panel, preserving three distinct petalled rosettes, that to the right with the tips folded in, the central with overlapping lanceolate petals, that to the left with broad petals, a plain border overhanging above, 21 in. (53.3 cm.) wide, Provenance Neuchâtel Private Collection.