

Statement of ATADA Concerning the Request for a Memorandum of Understanding Between the Government of the United States of America and the Government of Libya

Meeting of the Cultural Property Advisory Committee, July 19-20, 2017

I. INTRODUCTION

ATADA, an organization representing art dealers, private collectors, and museums of ethnographic and tribal art, respectfully submits this statement for consideration by the Cultural Property Advisory Committee (CPAC) in connection with the proposed Memorandum of Understanding Between the Government of the United States of America and the Government of Libya (the “MOU”).

ATADA condemns all looting of monuments and archaeological sites. ATADA supports safe harbor for art and artifacts at risk, a lawful, secure market. ATADA recognizes that the global circulation of art and antiquities enables preservation, scholarship, and access to the history of humankind for a world audience.

ATADA supports the Congressionally mandated application of the 1983 Cultural Property Implementation Act (CPIA). ATADA objects to the fact that the actual text of the request by the Government of Libya (Libya Request) has not been published; a publicly available statement of the Libya Request is necessary in order to determine whether the request actually meets the criteria set by Congress in the CPIA.

As summarized by the U.S. Department of State (DOS), the Libyan Request fails to meet the criteria set by Congress for an agreement under the CPIA.

ATADA therefore strongly objects to the granting of any Memorandum of Understanding (MOU) between the governments of the United States and of Libya.

The Request Calls for Return, but the Libya Government Cannot Protect Returned Items.

Libya lacks a government capable of administrative management, or of protecting Libyan materials that would be returned to it as a result of a MOU with the United States. Libya is divided and ruled by competing governments and multiple independent militia factions; the current government holds only a portion of Libyan territory.

The Request states that all of Libya’s 24 museums are closed. While Libyan archaeologists have stated that items in museums are “safe,” they are safe only because they have been hidden behind locked doors and camouflaged by furniture.¹ This is not safe. ICOM has stated that it “believes” Libyan museums are secure, but “there are no guarantees, as the country has not been considered safe enough to send people on the ground to assess the recent situation”.² ATADA believes that a grant of safe harbor to Libyan materials identified as having been looted from Libyan sites is an

¹ “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/>

² Ibid.

appropriate response to a situation in which the Libyan government not only lacks control but has failed to demonstrate a commitment to preserve heritage in the past.

The Request is Too Broad to meet the Statutory Requirements of the CPIA.

The official Summary of the Libya Request calls for U.S. import restrictions covering the entire history of the geographic region that is Libyan territory from the Paleolithic through the Ottoman Era (12,000 B.C.-1750 A.D.) and on its ethnological material dating from 1551 to 1911 A.D. It covers everything from prehistoric lithic tools to Classical antiquities of the Roman period to Islamic furniture, brassware and calligraphy to nomadic herdsman's baskets and cooking pots – and everything in between. The summary Libya Request is generic and expansive, rather than specific, as the statute requires. It lists every material and type of object from this 14,000-year period.

Libya has made no showing that this entire, broad range of material is specifically at risk, and government statements denying that major areas holding antiquities are at risk have been made by the Libyan government in recent months. The statute requires that the Libyan government demonstrate that Libyan art from all the requested periods subject to import restrictions is in danger of looting.³ In fact, the Libyan government has denied the necessity for protections to monuments (see below).

The Libyan Request does not distinguish between items of historical or archaeological importance and items that are common, repetitive, and that are found outside of archaeological contexts, such as Ottoman period and earlier Islamic artworks, Tuareg materials, and the artifacts of the now-exiled Jewish communities of Libya. However, it calls for a U.S. embargo against them all.

The Libyan request for a U.S. embargo on antiquities due to immediate threats to its sites, monuments, and cultural heritage, and Libya's ostensible commitment to protecting monuments is questioned and in part contradicted by statements of Libyan government officials. In fact, the Libyan government has denied the necessity for protections to monuments damaged by graffiti and threatened by military actions.⁴

On June 11, 2017, one year after the designation, 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. The statement alleged that the UNESCO World Heritage Committee placed the sites on the list "without any regulatory, legal or logical actions."⁵ The GTA urged local authorities to "shoulder their responsibilities and take necessary measures to protect and preserve cultural heritage."

³ 19 U.S.C. § 2602(c)(2)(B).

⁴ Libya's Antiquities Department refutes UNESCO report on Leptis Magna <https://www.libyaobserver.ly/culture/libyas-antiquities-department-refutes-unesco-report-lepits-magna>, Last visited July 8, 2017

⁵ Libya rejects UNESCO's decision to place five sites on endangered list, <https://www.libyaobserver.ly/culture/libya-rejects-unesco%E2%80%99s-decision-place-five-sites-endangered-list>, last visited 07/09/2017.

The five sites placed on the World Heritage danger list were Leptis Magna, the ancient city of Sabratha, Cyrene, the rock art site of the Akakus Mountain and Ghadames. In an interview with on August 7, 2016, archaeologist and head of Leptis Magnis Control Committee Ezzedin Fagi stated that the vandalism and sabotage at Leptis Magnis were falsely described in the UNESCO report. He said that Sabratha and Ghadames are also in good condition, and that his department was preparing a report to correct the UNESCO claims.⁶

Libya has not taken steps to protect its cultural heritage, as required by the statute.⁷ On May 15, 2017, just two months ago, Libya issued a list of incidents of items stolen from Libyan museums dating back to WW2, 75 years ago. One statue on the list was allegedly stolen during WW2, and has been on public exhibit at the Cleveland Museum of Art for more than 25 years, and has never been claimed by Libya.⁸ Two months is an insufficient track record to establish due diligence, given that many of the items on the “stolen” list were taken 75 years ago and never reported.

Even more damning, Libya failed to protect cultural resources long before the current civil war, according to the Request. The Libyan government does not promise to change government policy even now.

The Libyan Request itself gives examples of failure by the Libyan government to address the most basic needs for cultural protection. The Request states that artifacts, both “documented and undocumented,” have been stolen from its museums and storerooms. It states that not a single museum in the country is open or staffed by the government, leaving only individuals, presumably volunteers, who “take personal responsibility” for artifacts.

The Libyan government has not engaged in cultural exchanges with the U.S., whether through traveling exhibitions, museum loans, or providing digital online access Libyan art and artifacts. There is no demonstration that import restrictions sought are “consistent with the general interest of the international community in the interchange of cultural property” as the CPIA requires.⁹ Indeed, the Libyan Request states, “Sharing of our cultural heritage is not feasible at this time because the crisis situation of armed conflict, civil unrest, and terrorism threat makes it not feasible to work out collaborative arrangements with foreign partners.”

Finally, with respect to the statutory criteria for an MOU, there is no demonstrated U.S. market for illegal Libyan art or artifacts, such that ending a market for pillaged artifacts would be of “substantial benefit in deterring a serious situation of pillage” as the statute requires.¹⁰ The request does not supply actual evidence for illegally acquired artifacts or a market for them in the U.S. at all.

⁶ Libya’s Antiquities Department refutes UNESCO report on Leptis Magna <https://www.libyaobserver.ly/culture/libyas-antiquities-department-refutes-unesco-report-lepits-magna>, Last visited July 8, 2017.

⁷ 19 U.S.C. § 2602(a)(1)(C)(i).

⁸ 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.

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

¹⁰ 19 U.S.C. § 2602(c)(2)(B)

II. THE REQUEST FOR EMBARGO ON MATERIAL CULTURE OF THE TUAREG MINORITY AND LIBYAN JEWS FORCIBLY EXPELLED FROM LIBYA

The Libyan request states as follows: “Many of the old Jewish cemeteries and sites are being looted for antiquities to export where there is an active transit or ultimate market for these objects. There is also evidence for the looting of Roman period archaeological sites and sites with Berber ethnological material.”

A. TUAREG / BERBER ETHNOLOGICAL MATERIAL

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

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

The CPIA requires that ethnographic material have some important character: “No object may be considered to be an object of ethnological interest” unless the object is “important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.”¹¹

That is not the case here. The goods made by the Tuareg were household goods made to sell; the Tuareg are traders by occupation, and the castes of artisans (blacksmiths, jewelers, etc.) have made and traded Tuareg goods to other Tuareg and to their Hausa, Falani (Wadabe) and other Saharan neighbors as a business for as long as there has been documentation of the Tuareg lifestyle, starting in the late 19th century. Since the 1960s, Tuareg folk art and crafts have been widely popular in Europe, the UK, and the US.

Even more to the point, there is only a very small population of Tuareg in Libya. The vast majority live, work and trade in other African nations.

The Tuareg are traditionally a nomadic people of Berber descent, whose communities are found today within the borders of eight African and North African states:
Niger: approximately 2 million¹²

¹¹ 19 U.S.C. §2601(2)(C)(ii)(II).

¹² *The World Factbook*. Central Intelligence Agency. Retrieved 2016-10-08., Niger: 11% of 18.6 million.

Mali: approximately 0.5 million¹³
Burkina Faso: 370,738¹⁴
Algeria: 25,000–150,000 (1987)
Libya: 20,000 (1993)¹⁵
Morocco: 4,500 (1984) (nomadic)
Tunisia: 2,000 (1987) (nomadic)
Mauritania: estimated 100,000¹⁶

In Niger, the Tuareg are about 11% of the population – in Libya, only about .3%.

Although Tuareg items are listed among those for which embargo is sought, the Libyan government deems the Tuareg “not truly Libyan.”

According to the 2016 Department of State Human Rights Report:¹⁷

“Ethnic minorities faced instances of societal discrimination and violence. Racial discrimination existed against dark-skinned citizens, including those of sub-Saharan heritage. Government officials and journalists often distinguished between “loyal” and “foreign” populations of Tebu and Tuareg in the south and advocated expulsion of minority groups affiliated with political rivals on the basis they were not truly “Libyan.” A number of Tebu and Tuareg communities received substandard or no services from municipalities, lacked national identity numbers (and thus access to employment), and faced widespread social discrimination.”

The Department of State thus asserts on its own behalf that (1) the Libyan government does not consider the Tuareg to be Libyan and is attempting to expel them, but at the same time sets forth the proposal that (2) the U.S. government should return any objects created by the Tuareg to the Libyan government as essential to Libyan heritage.

The vast majority of Tuareg ethnographic materials originate in countries other than Libya and are and have been widely marketed throughout the world – mostly by Tuareg traders. Interviews with art dealers active from 1970-2005 establish that the primary sellers of Tuareg art are of Tuareg ethnicity and the primary source countries for Tuareg materials are Niger, Mali, and Mauritania.¹⁸ There are 2903 items identified as Tuareg in the Musee du Quai Branly in Paris, one of the world’s largest and most comprehensive collections of Tuareg art and handicrafts. Only four of the items are identified as from Libya: a tambourine, a talisman, and two photographs.

The Tuareg Market.

¹³ Pascal James Imperato; Gavin H. Imperato (2008). *Historical Dictionary of Mali*. Scarecrow. p. lxxvii. ISBN 978-0-8108-6402-3., Tuareg: 3% [of total Mali's 17.1 million population].

¹⁴ “*The World Factbook*”. *Central Intelligence Agency*. Retrieved 2016-10-08., Burkina Faso: 1.9% of 19.5 million.

¹⁵ https://en.wikipedia.org/wiki/Tuareg_people; see also: https://joshuaproject.net/people_groups/15608/LY, both last visited 07/08/2017

¹⁶ <https://www.csmonitor.com/World/2012/0802/In-Mauritanian-refugee-camp-Mali-s-Tuaregs-regroup>, and https://joshuaproject.net/people_groups/15607/MR, both last visited 07/08/2017.

¹⁷ <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

¹⁸ Interview by Kate Fitz Gibbon with Alan Suits and Anne Lehman, in Santa Fe, NM, 07/09/2017.

It is well established that there are very few Tuareg in Libya compared to other nations, and that Libya is only a very minor source for Tuareg materials. Ethnographic studies going back to the 1870s describe the active selling by Tuareg traders (who dominated the caravan trade) of Tuareg materials throughout the Sahara. The collections of ethnographic museums beginning in the 1930s and 1940s show that Tuareg materials have been widely collected throughout the 20th century. The proliferation of galleries and shops selling Tuareg handicrafts and its regular appearance at international folk art markets make clear that there has been an active non-African market for old, new, and antique Tuareg goods for the last 100 years.

The Western European market as a whole is greater than the U.S. market, with Tuareg items very popular in the Netherlands, France, and Germany. It is easier for Tuareg traders to enter Europe than the U.S. and this encourages European marketing of their wares. Both the making of new folk crafts by Tuareg in Africa and the business of selling old and new is crucial to the economic welfare of the Tuareg throughout the Sahara, as many can no longer support themselves solely from nomadic or settled animal husbandry and agriculture.

Tuareg ethnographic materials are common, repetitive, and impossible to date as being made prior to (unlawful to import) or after (lawful to import) the 1911 cut-off date in the Libyan Request. There is little or no difference between late 19th century Tuareg items and items made today. Comparing the materials collected (as old) by European museums in the 1930s and 1940s, Kristyne Loughran, writing in "The Art of Being Tuareg," Thomas Seligman and Kristyne Loughran, Eds. stated that, "*Many of the forms they described in the past [19th century] still exist today, though some of the objects have become rare or are no longer used.*"¹⁹

The Libyan Request for import restrictions on Tuareg items up to 1911 would be impossible to enforce, because there is nothing to distinguish a 40-80-year-old Tuareg handicraft, which would be legal to import, from a well-cared for 110-120-year-old one, which would be illegal to import. Even museums generally do not precisely date items unless by their ownership history. For example, few of the almost 3000 Tuareg items in the collection of the Musée du Quai Branly have dates more precise than "early 20th century" or "19th-early 20th century" or dates relating to their accession into the museum, such as "before 1931." None of these descriptions, although they are undoubtedly the best the museum can do, when applied to similar objects, would enable an importer or U.S. Customs and Border Protection officer to determine whether an item could be lawfully entered.

A few changes have taken place in the creation of items for the market, but only in the last 30-40 years, which is irrelevant for purposes of the MOU. Jewelry is the most popular Tuareg good in the market. Seligman states that the "classical jewelry repertoire has remained remarkably stable over time."²⁰ The traditional metal for Tuareg jewelry was a nickel/copper/zinc alloy (called "German silver" in the market, and "*kobo*" among the Tuareg) but coin silver was also used. About 45 years ago, sterling silver began to be used for jewelry, but *kobo* continues to be popular. Only in the last 20 years have there been dramatic changes in Tuareg jewelry design; it is often more delicate and less "tribal" in appearance than the fully traditional jewelry of the

¹⁹ "The Art of Being Tuareg," Thomas K. Seligman and Kristyne Loughran, Eds., UCLA Fowler Museum (February 2006)

²⁰ Id., p. 178.

1970s and 1980s. Therefore, while very recently made jewelry can often be identified as new, there are no distinguishing features to differentiate between a 40-100-year-old lawful to import item and a 120-year-old unlawful one.

Finally, the legislative history of the CPIA shows that Congress did not contemplate coverage of the type of ethnological items requested by Libya. The Tuareg materials sought for embargo are traditional items that were made either for household use or personal ornamentation – or specifically for trade. Such items were common, repetitive and essentially alike. That is precisely what makes them so hard to date, for purposes of the embargo, and places them beyond the ethnological materials category contemplated by Congress when the CPIA was drafted. The legislative history makes clear that agreements under the CPIA were intended to apply only to a "*narrow range of objects possessing certain characteristics.*"²¹

The Committee *does not intend* the definition of ethnological materials under this title to apply to trinkets and other objects that are *common or repetitive or essentially alike* in material design, color, or other outstanding characteristics with other objects of the same time, or which have relatively little value for understanding the origins or history of a particular people or society."²²

ATADA therefore recommends that items of Tuareg material culture not be included in any MOU between the U.S. and Libya.

III. THE REQUEST FOR JEWISH ARTIFACTS OF LIBYAN ORIGIN

The Libya request also claims artifacts and records of Libyan Jews. The shameful history of the Libyan government's treatment of Libya's indigenous Jewish population should be well known to members of the Cultural Property Advisory Committee. CPAC should recognize that all objects related to the former Jewish communities of Libya belong to the Jews forced to leave Libya, and to no other.

Nonetheless, it has been the longstanding policy of the Department of State that *people* do not have legitimate claims to their history or their art; only *governments* have claims to art and history. Thus, the State Department has insisted that the U.S. must return the water-soaked Jewish family records rescued by U.S. soldiers from Saddam Hussein's secret police archives back to Iraq. The Department of State says that these records, which belonged to Iraq's no-longer-existent Jewish community, will eventually be returned to the National Archives of the

²¹ U.S. Senate Report, 97-564, "Implementing Legislation for the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, 97th Congress. Second Session: Miscellaneous Tariff: Trade, and Customs Matters (September 1982), 4, providing: "Only the term 'archaeological or ethnological materials of the State Party' requires fuller explication here. The Convention does not define this terms (*sic*). The definition is intended by the committee to reflect the understanding of U.S. negotiators that the application of import restrictions under agreements entered into under Section 203 or emergency actions taken under Section 204 is limited to a narrow range of objects possessing certain characteristics."

²² Ibid.

government of Iraq in Baghdad, despite pleas from members of Congress not to do so.²³ A similar situation now faces the CPAC in the case of Libya.

The record of Jews in Libya may go back to King Solomon's reign, based on evidence of a synagogue in the Barion region. More secure dating comes from inscriptions from Jewish communities in the Benghazi region dating to 146 BCE. Jewish communities coexisted with others in Libya in the Roman period. As in other parts of the Islamic world, Jews had greater freedom in North Africa than in Europe and wielded important economic power as traders until well into the 19th century.²⁴

Italy colonized Libya in 1911, and life for the Jewish communities remained relatively stable until passage of anti-Semitic laws starting in 1939. Concentration camps were set up in 1942 and thousands of Jews were rounded up and trucked to the desert camps. Hundreds died as a result of illness, mistreatment, and starvation.

However, even after their sufferings in the Second World War, there were still 38,000 Jews in Libya in 1948. Repeated acts of anti-Jewish violence killed dozens of Jews and hundreds of Jewish homes and businesses were burned in multiple incidents that year. Emigration to Israel was permitted in 1949 and several thousand Jews left Libya.

By 1961 only a quarter of the Libyan Jewish community remained. Laws dissolving Jewish community organizations, requiring registration, and granting Libyan citizenship to only six out of some 10,000 Jewish residents, prompted further emigration. Serious violence and anti-Jewish riots after the Six-Day War caused Jewish leaders to ask King Idris I for permission for all Jews to leave. More than 6,000 Jews were evacuated to Italy in one month, leaving most of their possessions behind.

Colonel Muammar Gaddafi came to power in 1969. In the earlier expulsions of Jews, most had been forced to leave all property behind. Gaddafi confiscated all Jewish property and cancelled all debts to Jews. (At a later date, when his regime was crumbling, Gaddafi reached out to Israel for help.)²⁵

The last Jew in Libya, an 80-year-old woman found in a nursing home, was evacuated to Italy in 2003.

Gaddafi made several conciliatory moves toward the expatriate Jewish community and to Israel in 2004, offering compensation for property left behind, but then said that no compensation would be made to Jews living in Israel, where many had moved.²⁶ Compensation did not take place.

²³ *Who should keep Iraqi Jewry's archives, saved from Saddam, now on tour in US?*, <http://www.timesofisrael.com/who-should-keep-iraqi-jewrys-archives-saved-from-saddam-now-on-tour-in-us/>, last visited 07/09/2017.

²⁴ https://en.wikipedia.org/wiki/History_of_the_Jews_in_Libya, last visited 07/09/2017.

²⁵ "Analysis: Libya's Gaddafi had a history of reaching out to Israel." Jerusalem Post. <http://www.jpost.com/Israel-News/Libyas-Gaddafi-had-a-history-of-reaching-out-to-Israel-451214>

²⁶ Id.

In 2011, national insurgency (in part based on claims that Gaddafi himself was secretly Jewish) and foreign pressure resulted in the fall of Gaddafi's government. Libyan leader Mustafa Abdul Jalil (Chairman of the National Transitional Council during a transitional period after the fall of Gaddafi's government) invited World Organization of Libyan Jews leader David Gerbi to return to Tripoli.²⁷ Gerbi unblocked the entrance to Tripoli's Dar Bishi Synagogue, announcing the beginning of better relations. However, Gerbi's work to repair the synagogue ended suddenly two days later when permission was revoked.²⁸

Thus, even the most recent attempts at integration, reconciliation or compensation for Jews by the government of Libya has been short-lived and marked by self-interest, not compassion or any desire for justice. This oppressive and abusive relationship is now reiterated, in a small and mean way, by the demand for Jewish artifacts as part of Libyan heritage in the Libyan Request.

IV. CONCLUSION

The failure of the Libyan government to meet statutory standards for an MOU on art and artifacts spanning a 14,000-year period is the only reason required to reject the Libya Request. The failure to establish any need, justification, or means of enforcing a listing of Tuareg/Berber material, which was made for trade in the first place, and is far more widespread through seven other Saharan countries than in Libya is clear; Tuareg/Berber materials have no legitimate place on a list of restricted materials from Libya. Finally, the offensive claim of the Libyan government to the material records of Jewish communities in Libya, which the Libyan government sought to eradicate throughout the 20th century, and which even now, that government refuses to honor, should be rejected absolutely.

²⁷ "Libya's 'revolutionary Jew' returns to restore Tripoli synagogue," The Guardian, <https://www.theguardian.com/world/2011/oct/03/libyas-revolutionary-jew-restore-synagogue>

²⁸ "Libyan Jew Returning From Exile Barred From Tripoli Synagogue," <http://www.haaretz.com/jewish/libyan-jew-returning-from-exile-barred-from-tripoli-synagogue-1.387902>