

Testimony of Dr. Mark S. Aldenderfer on the Proposed Memorandum of Understanding between the Federal Democratic Republic of Nepal and the United States Regarding Import Restrictions on Archaeological and Ethnological Materials Representing Nepal's Cultural Heritage

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Background: Since 2008, I have directed 11 seasons of archaeological fieldwork in the Mustang and Manang districts, Gandaki Province, Nepal; except for 2019 and 2020, I have traveled to Nepal at least once and sometimes twice every year to hold conversations with local stakeholders and consult with the Department of Archaeology (henceforth, DoA), Government of Nepal. In 2011, I served as a consultant to the DoA on the National Consultation Workshop “Nepal and the Silk Roads.” UNESCO/Norway Funds-in Trust, and the Silk Roads Serial World Heritage Nomination Project. I have held three consecutive five-year permits to conduct archaeological research in multiple locations along the Himalayan arc. Prior to my Nepali research, I was fortunate to work on the Tibetan Plateau from 1997 to 2005, and then sporadically until 2018. Through this research I became familiar with the Buddhist and pre-Buddhist cultures of the region and conversant in the wide range of material culture they possess, including sculpture, manuscripts, and artifacts of religious significance. I regularly follow Nepali news media regarding heritage conservation and management and have a network of colleagues who help keep me up-to-date on this topic.

On behalf of the Society for American Archaeology, the Archaeological Institute of America, and myself, I strongly support the proposed Memorandum of Understanding (MoU) with Nepal for the protection of its archaeological and ethnological heritage. My testimony will focus on the four determinations of eligibility as outlined in the Cultural Property Implementation Act.

1. Is Nepal's archaeological and ethnological record under threat from looting and theft?

The threats to Nepal's cultural heritage are multiple and severe. Aside from architectural heritage, which is often seen both nationally and internationally as a preservation priority (especially after the 2015 Gorkha earthquake), there are two primary categories of cultural heritage: (1) mobiliary art (most of which is of the ethnological record), which includes a wide range of objects including metal, wooden, terra cotta, and clay statues and sculptures of Buddhist and Hindu origin; artifacts used in religious practice (especially those of Tibetan Buddhism); manuscripts written in multiple languages (Sanskrit, Tibetan, Nepali, Pali, and others); paintings on fabric (*paubha* or *thangka*); wooden decorative elements or friezes found primarily in religious structures; inscriptions written on stones; and a wide range of smaller “wealth objects,” such as

coins, jewelry, weapons, and much more; and (2) archaeological sites and their contents, which depending on their chronology, have mobiliary art of all kinds.

From the perspective of the international art market, the most valuable artifacts are statues and sculptures and ritual objects. Mobiliary art, especially of a religious nature, is found in many thousands of private homes, shrines, and temples (both active and abandoned), and larger religious institutions around Nepal. Much of it is in the remote highlands of central and western Nepal along the border with the PRC (Tibet) including the Manang, Mustang, Dolpo, and Humla districts. These places typically lack adequate or permanent police protection.¹ In late June 2023, “statues and religious objects” were stolen from two monasteries in Dolpo.² The guardian of one of these was severely beaten. The theft was attributed to “foreigners.” But thefts also occur in densely populated areas, such as the Kathmandu valley, which has witnessed hundreds, perhaps thousands, of thefts from shrines and temples since the 1960s.³

In contrast to many parts of the world, such as Mesoamerica and the Middle East, illicit excavation at archaeological sites is much less common than the theft of mobiliary art. In my experience, looting is a very local affair done by local people. The large majority of sites are not likely to contain the mobiliary art sought by looters, and there really is no market that I am aware of for quotidian artifacts.⁴ Many of the mortuary caves I have excavated in Upper Mustang have had pits dug into them at some time in the past, but these tend not to be extensive and not at a scale that suggests a systematic, organized effort (Figures 1 and 2)

The important Buddhist-era site of Mardzong, near the famous town of Lo Monthang, however, shows how the knowledge of local people regarding valuable artifacts nearby can be translated into economic gain.

In 2008, our project investigated Mardzong, a cliff-face residential complex composed of habitation and ritually important rooms.⁵ Although its façade had collapsed, it was relatively intact, and an extraordinary cache of Tibetan-language documents were discovered in an upper chamber. These were collected and studied, not without controversy, over the next 10 years. What became apparent as the folios (individual pages) of the volumes were examined is that some once had small, but beautiful, color

¹ <https://thenepalipost.com/details/1868>; in this case, the thieves were said to be “Tibetan.”

² <https://www.facebook.com/dolpoproject/>, June 29 entry.

³ E. Smith and E. Thompson, “A Case Study of Academic Facilitation of the Global Illicit Trade in Cultural Objects: Mary Slusser in Nepal,” *International Journal of Cultural Property* 30, no. 1 (2023): 22–41. doi:10.1017/S0940739123000048.

⁴ However, the large Buddhist-era sites in the Terai along Nepal’s southern border with India may have been looted or at least explored by thieves in the early twentieth century. See Prakash Darnal, “Archaeology of Nepal,” in *A Companion to South Asia in the Past*, ed. G. Shug and S. Walimbe (New York: Wiley, 2016).

⁵ Agnieszka Helman-Ważny and Charles Ramble, *The Mardzong Manuscripts: Codicological and Historical Studies of an Archaeological Find in Mustang, Nepal* (Leiden: Brill, 2021).

illustrations of Tibetan deities that had been carefully cut out. (Figures 3 and 4). Local rumor suggested that these illustrations were sold on the international art market by local people who worked with European dealers. While this story could not be verified, it is probable that some local people had knowledge of the folios and exploited them for personal gain.

At least for artifacts recovered through archaeological excavation, the lack of effective state control over the disposition of these materials creates another context for theft. Although Nepali legislation asserts state ownership of heritage artifacts, broadly defined,⁶ the reality on the ground is quite different. Local people routinely claim ownership of excavated materials. In many instances, they oppose the transfer of these artifacts to putatively secure locations and strive to store the artifacts in their villages. In my experience, DoA officers in the field are seldom able to overcome local resistance. Because these facilities almost always lack adequate security, valuable artifacts can be stolen easily. For instance, after lengthy negotiation with local people, the Mardzong manuscripts were given to the Choede monastery in Lo Monthang and placed in a small museum in the monastic complex. Unfortunately, some of the most important folios from a scholarly perspective are now missing, and it is suspected that they have been sold to collectors.⁷

I have encountered a similar situation in my research at Samdzong in Upper Mustang. In 2010–2013, our project recovered three gold/silver masks from mortuary contexts dating between 450 and 600 CE. Similar masks have been found in western Tibet and Central Asia, but these are the first to be found in Nepal. Despite the efforts of the DoA officer, the local villagers would not allow their transport to a secure location in Kathmandu or even nearby Lo Monthang and instead stored them in their now abandoned “community center.” I returned in 2016 and found that one of the masks had almost disintegrated. As of this writing, I do not know if the other masks are intact or even still in Nepal—they are desirable artifacts on the art market. More quotidian artifacts have no market value—they are not stored effectively but cannot be removed, and over time, they will lose any research value. This pattern has been repeated at each of the sites I have worked in Nepal. At least as regards heritage objects, the reach of the government does not extend beyond Kathmandu valley. This invites theft of heritage objects by local villagers and, eventually, collectors of antiquities.

In summary, Nepal’s cultural heritage continues to be under threat from external forces and the limited ability of the state to protect that heritage.

2. Has Nepal taken steps internally to protect its cultural resources?

The foundation of Nepali heritage protection is through the Ancient Monuments Preservation Act, which was first issued in 1956 and has been amended several times.

⁶ Ancient Monument Preservation Act (2013 Nepali calendar), 1956; <https://lawcommission.gov.np/en/?cat=503>.

⁷ Charles Ramble, personal communication 2023.

According to Yates and Mackenzie, “It defines ancient monument[s] as any of a number of structures, including temples, stupas, and so on that are over 100 years old, and archaeological objects, including all sacred art, that also [are] over 100 years old”.⁸ Three levels of monument classification are recognized: those of international, national, and local importance. The DoA is charged with protection and maintenance of public monuments at all levels, but priority is given to those in the first two categories; those owned by individuals or *guthis*⁹ must be maintained by their owners or community. The DoA has a very large portfolio of responsibilities; 11 tasks are listed in its mission statement. The most relevant of these for my testimony are “preservation and protection of monuments and archaeological sites,” “establish and enhance the museums,” “control the illicit export and import of movable cultural property,” and “provide technical and financial assistance to the local people and agencies for the monument conservation.” Unfortunately, it is widely recognized in Nepal that the DoA has never been adequately financed and staffed by the state to fulfill even these tasks, let alone the other seven, and except for the immediate post-earthquake years, its budget has actually been reduced.¹⁰

Despite these challenges, the DoA has been an important partner with international aid and donor institutions, such as UNESCO, following the 2015 earthquake, and has provided indispensable service to the reconstruction effort despite numerous challenges, including limited staffing and the conflicting priorities of many stakeholders with radically different opinions about how to rebuild the structures.

But of more relevance to this testimony is how the DoA has been working with the Nepal Heritage Recovery Campaign (NHRC)¹¹ and other grassroots organizations to repatriate stolen sacred art. Since the 1990s, Nepali citizen-activists, scholars, artists, and others, often with the help of sympathetic foreigners, created databases and image banks to document stolen Nepali art in museums across the world with the intent to repatriate it. According to some estimates, as much as 80% of Nepalese artifacts outside the country were likely to have been stolen,¹² but this figure is disputed by museum leaders. In 2015, a Facebook page named the “Lost Arts of Nepal”¹³ began as a crowdsourcing effort to post images of Nepali art in Western museums that appears to have been stolen from sacred sites. In 2021, the NHRC was formally constituted as a private organization devoted to the repatriation of this art. It does not receive

⁸ D. Yates and S. Mackenzie, “Heritage, Crisis, and Community Crime Prevention in Nepal,” *International Journal of Cultural Property* 25 (2018): 203–221.

⁹ A *guthi* is a community trust of land tenure that is collectively responsible for maintenance and protection of heritage sites on that land.

¹⁰ N. Chapagain, “Heritage Conservation in Nepal: Policies, Stakeholders, and Challenges,” Third Annual Himalayan Policy Research Conference, Madison, WI, 2008; C. Shrestha and B. Banskota, “Strengthening the National Capacity of National Heritage Monuments and Sites,” n.d. <https://tinyurl.com/22etv6j3> accessed August 2023.

¹¹ <https://nepalheritagerecoverycampaign.org/>.

¹² Zachary Small, “Citizen-Activists Lead the Hunt for Antiquities Looted from Nepal,” October 29, 2021, <https://www.nytimes.com/2021/10/29/arts/nepal-looted-antiquities-citizens.html>.

¹³ <https://www.facebook.com/lostartsofnepal/>.

government funding and is reliant on donations. It has had considerable success in repatriating objects found in museums, private collections, and auction houses, including the Metropolitan Museum of Art, the Dallas Museum of Art, and others.¹⁴ Many other objects have been identified in galleries, museums, and collections around the world, but obtaining definitive documentation is expensive and time consuming.

The DoA's role in the repatriation effort is reactive. If sufficiently persuasive documentation is presented to them, they consult with the Ministry of Foreign Affairs, which then initiates contact with representatives of the holder of the object. No effort is made by any party to determine how the artifact was removed from Nepal.

3. Are import restrictions still the best available method the United States can use to prevent the importation of stolen objects?

The implementation of this treaty will be of real benefit to the preservation of Nepal's cultural heritage. It will not, of course, stop its pillage entirely, but it will serve to make it more difficult to bring art into one of its primary destinations—the United States. It may also spur the creation of cooperative agreements for the development of heritage protection efforts with the EU and Japan, in particular, which have also been major importers of illicitly obtained objects. This agreement can provide an opportunity for the Government of Nepal to petition INTACH (Indian National Trust for Art and Cultural Heritage),¹⁵ which has provided significant post-2015 earthquake funding for the reconstruction of many heritage sites in Nepal, to utilize some of that funding for securing portable art more effectively in both rehabilitated as well as undamaged structures. The agreement may influence international organizations, such as the International Committee for Regional Museums of the International Council of Museums, to work more closely with Nepali institutions to create effective strategies for heritage protection primarily in terms of a heightened sense of guardianship. The implementation of the treaty will also provide the volunteer organizations working as outlined above to recover stolen art with a more formal and explicit avenue to request the return of objects in cooperation with the DoA.

But perhaps the most desirable and potentially far-reaching outcome of the implementation of this agreement could be the recognition of the necessity to fundamentally reimagine the role of the DoA as the primary guardian of heritage in Nepal. Some at the National Reconstruction Authority of Nepal,¹⁶ which was created in the aftermath of the 2015 earthquake, suggest that the DoA must create provincial offices that need to work more closely with local and regional centers to protect heritage sites. The Ancient Monument Protection Act should be updated with new rules that define local, regional, and national responsibilities more clearly;

¹⁴ E. Smith, "The Ongoing Quest to Return Nepal's Looted Cultural Heritage," *Georgetown Journal of International Affairs* 23, no. 2 (2022): 264–271.

¹⁵ <http://www.intach.org/>.

¹⁶ <http://www.nra.gov.np/en>.

staffing levels across all divisions of the DoA need to be significantly increased, as does its budget. The devolution of authority with a budget might, for instance, create a context for the creation of local museums or storage facilities for materials resulting from excavation. There is even argument that a Ministry of Culture should be created that coordinates heritage protection and conservation at the cabinet level.¹⁷ I grant these are unlikely to happen in the near term given the parlous fiscal situation of Nepal, but this agreement could serve to stimulate further discussion and debate.

4. Is Nepal open to foreign scientists and researchers studying its cultural resources, and making exhibits of its archaeological materials available to foreign museums (international scientific exchange)?

Permits for archaeological projects are readily available by negotiation with the DoA. MoUs are created that define the funding source, local partners (if relevant to the project), scope of work, the project time frame, and description of deliverables, such as reports, field records, and journal/book publication. At present, there are only two major foreign archaeological projects active in Nepal: excavations at Lumbini, the birthplace of the historical Buddha, directed by archaeologists from the University of Durham, UK; and my own project, HHARP.

Export permits for samples recovered from archaeological excavations are routinely granted. This is especially the case for materials that require archaeometric analysis (e.g., radiocarbon dating, elemental/isotopic analysis of human and faunal remains, paleoethnobotanical remains, metallurgical studies, etc.) as Nepal currently lacks the capacity to provide these services. Export permission is usually a part of the MoU between the archaeologist and the DoA, which has final approval of any export upon review. However, at times there is a tension in the field regarding the selection of samples for export. Because local people often assert ownership of excavated materials, the DoA officer assigned to the project must negotiate with them for sample selection. Generally, this is not a problem. I have never been denied an export permit, and I believe this is the case for the other, relatively few, foreign archaeological projects that have conducted work in Nepal over the past decades.

International exchanges of objects and portable art between Nepali and other museums across the globe does not appear to be a priority at this time. Instead, significant efforts are being made by private organizations and NGOs to repatriate portable art stolen in the past.

I appreciate the committee's time and consideration of this important issue and urge the panel to recommend that the State Department approve this important request.

¹⁷ The DoA is currently located in the Ministry of Culture, Tourism, and Civil Aviation.



Figure 1. Jumble of bones left by looters in the mortuary cave of Kyang, Manang



Figure 2. Looter's pit in the mortuary cave of Rhirhi, Upper Mustang



Figure 3. Undamaged folio from Mardzong, Upper Mustang, with central illumination.



Figure 4. Mardzong folio with central illumination carefully removed.