

Statement of the

Archaeological Institute of America, Lawyers' Committee for Cultural Heritage Preservation, United States Committee of the Blue Shield, American Anthropological Association, American Association of Museums, American Institute for Conservation of Historic and Artistic Works, American Schools of Oriental Research, Association of Moving Image Archivists, College Art Association, National Trust for Historic Preservation, Society for American Archaeology, Society for Historical Archaeology, Society of American Archivists, United States Committee of the International Council on Monuments and Sites, and the World Monuments Fund

Before the
Senate Foreign Relations Committee
The Honorable Robert P. Casey, Jr.

In Support of
Ratification of the 1954 Hague Convention on the Protection of Cultural Property in the
Event of Armed Conflict

April 15, 2008

Senator Casey and members of the Committee, thank you for the opportunity to submit this written statement in support of the ratification of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict. Ratification is a crucial step toward improving our foreign relations by sending a strong signal to all nations that the United States values their cultural heritage. It would also help in assuring the preservation of the world's cultural heritage for the benefit of future generations. We urge that the Committee recommend Senate ratification of the 1954 Hague Convention.

The 1954 Hague Convention was adopted in the wake of the cultural destruction inflicted on Europe by the German Nazi regime during World War II. It was based on earlier documents, including the Lieber Code instructions issued for the regulation of conduct by the United States Army during the Civil War, the Hague Conventions of 1899 and 1907, the Roerich Pact of 1935, and a draft convention prepared in the 1930s. The destruction, theft and pillage of cultural sites, monuments and works of art perpetrated by Germany during World War II demonstrated all too graphically the need for a new international instrument dedicated specifically to the protection of cultural property during armed conflict.

The actions of the United States' Monuments, Fine Arts and Archives teams and the regulations issued by General Eisenhower to ensure respect for cultural heritage set the United States apart in its efforts to protect cultural sites and to return looted art works to

their proper owners. The 1954 Hague Convention was, to a large extent, based on General Eisenhower's instructions. The United States was one of the first nations to sign the Convention, indicating its intention to ratify it. Subsequent conflicts, including those in the Balkans in the 1990s and today in Iraq, have demonstrated the ongoing need for such a convention to protect the cultural and historical record of humankind.

Under the terms of the Convention, States Parties are to protect the cultural property situated within their own territory and to avoid acts of hostility directed against cultural property, defined broadly to include historic structures and monuments, archaeological sites, and repositories of collections of artistic, scientific and historical interest. There are now 118 States Parties to the Convention, a number that includes most of our allies. Further, the United Kingdom has announced its intention to ratify the Convention.

The Convention lays out the basic principles for protecting cultural property. It begins with a preamble, which sets out the reasons for the adoption of the Convention. It is worth noting two of the introductory paragraphs in particular:

Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;
Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection . . .

These phrases are part of a tradition of nations freely joining together to care for the cultural property located within their borders and to respect their adversaries' cultural property during warfare.

Article 1 of the Hague Convention offers a broad definition of cultural property as "movable or immovable property of great importance to the cultural heritage of every people." There follows a list of examples of cultural property, which is clearly intended not to be exhaustive, but includes "monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives . . .". In addition to movable and immovable property, cultural property also includes repositories of cultural objects, such as museums, libraries, and archives, as well as refuges created specifically to shelter cultural property during hostilities.

Article 2 defines the "protection of cultural property" as consisting of two components: "the safeguarding of and respect for such property." Safeguarding refers to the actions a nation is expected to take during peacetime to protect its own cultural property. This is

embodied in Article 3, which elaborates that nations are obligated to safeguard cultural property located within their territory during peacetime from “the foreseeable effects of an armed conflict.” Respect refers to the actions that a nation must take during hostilities to protect both its own cultural property and the cultural property of another nation. This obligation is embodied in the two main substantive provisions of the convention: Article 4, which regulates conduct of parties during hostilities, and Article 5, which regulates the conduct of occupation.

The central premise of these articles is that parties to the Convention are to show respect for cultural property by protecting cultural property situated in their own territory and by avoiding harm to similar resources situated in the territory of another State Party. Under Article 4(1), nations are to avoid jeopardizing cultural property located in their territory by refraining from using such property in a way that might expose it to harm during hostilities. This means that nations should not use cultural property as the location of strategic or military equipment nor should such equipment be housed in proximity to cultural property. Also under Article 4(1), a belligerent nation should not target the cultural property of another nation. Article 4(2) provides that the obligations of the first paragraph “may be waived only in cases where military necessity imperatively requires such a waiver.”

Article 4(3) sets out the obligation “to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property . . .”. Paragraph 3 also prohibits the requisitioning of movable cultural property located in the territory of another party to the Convention. Paragraph 4 of this article prohibits carrying out acts of reprisal against cultural property. Paragraph 5 states that if one State Party has failed to comply with Article 3 by not preparing to safeguard its cultural property during peacetime, this failure does not mean that another State Party can evade its obligations under Article 4.

Article 5 sets out the obligations of a State Party during occupation, emphasizing that the primary responsibility for securing cultural property lies with the competent national authority of the State that is being occupied. Thus the first obligation imposed on the occupying power is to support these national authorities as far as possible. The obligation of the occupying power to care for and preserve the cultural property of the occupied territory is very limited and applies only when the national authorities of the occupied territory are unable to do so, only when the cultural property has been “damaged by military operations” and only “as far as possible.”

Article 6, permitting the distinctive marking of cultural property by a special emblem, the Blue Shield, and Article 7, requiring that States Parties undertake to educate their military and introduce regulations concerning observance of the Convention, complete the general substantive provisions of the Convention. Articles 8 to 14 are concerned with the conditions of special protection, which may be accorded to certain categories of cultural

property under specific conditions. The remaining articles address such topics as personnel (Article 15), the distinctive emblem of the Blue Shield (Articles 16–17), the scope of the Convention’s applicability (Article 18–19), and procedural matters (Articles 20–40).

In conclusion, the policies and practices of the U.S. military are already consistent with numerous of the principles of the 1954 Hague Convention under the 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land and its Annex (of which the United States is a party) and as a matter of customary international law.¹ During both Gulf Wars, the United States military took considerable care to gather information on the locations of cultural sites in Iraq and avoided targeting them. Even so, ratification would codify the obligations of the United States military, assure our allies that we all observe the same rules, and encourage marking of cultural sites.

We urge the Committee to recommend that the Senate ratify the 1954 Hague Convention.

Testimony submitted on behalf of:

The Archaeological Institute of America (AIA) is North America's oldest and largest organization devoted to the world of archaeology. Founded in 1879 and chartered by the US Congress in 1906, the AIA today has 8,500 members, including professional archaeologists, students, and enthusiasts from all walks of life, united by a shared passion for archaeology and its role in furthering human knowledge.

The Lawyers’ Committee for Cultural Heritage Preservation is an association of attorneys, law students and members of the interested public who have joined together to promote the preservation and protection of cultural heritage resources in the United States and internationally through education and advocacy.

The United States Committee of the Blue Shield (USCBS), founded in 2006, is a nonprofit organization committed to the protection of cultural property worldwide during armed conflict. The Blue Shield is the symbol specified in the 1954 Hague Convention to mark protected cultural property. USCBS coordinates with the International Committee of the Blue Shield, other national Blue Shield committees, and a number of U.S. cultural heritage organizations to offer emergency assistance for cultural property at risk due to armed conflict.

The American Anthropological Association, founded in 1902, is the world’s largest professional organization of anthropologists and others interested in anthropology, with an average annual membership of more than 10,000. The Arlington, Va.-based association

¹ See, e.g., Department of Defense, January 1993 Report of Department of Defense, United States of America, to Congress on International Policies and procedures regarding the Protection of Natural and Cultural Resources during Times of War.

represents all specialties within anthropology – cultural anthropology, biological (or physical) anthropology, archaeology, linguistics and applied anthropology.

The American Association of Museums (AAM) is the major national service organization for the entire museum community representing every type of museum, including art museums, history museums, natural science museums, science and technology centers, children’s museums, and also zoos, aquariums and arboretums. Our mission is to enhance the value of museums to their communities through leadership, advocacy, and service. AAM has 15,000 individual, 3,000 institutional, and 300 corporate members.

The American Institute for Conservation of Historic & Artistic Works (AIC) advances the practice and promotes the importance of the preservation of cultural material as a means toward a deeper understanding of our shared humanity. AIC plays a growing international leadership role as it expands its services to the field by providing educational opportunities, establishing and upholding professional standards, promoting research and publications, and fostering the exchange of knowledge among conservators, allied professionals, and the public. As the national membership organization supporting conservation professionals, AIC serves a membership that has grown from fewer than 500 members at the time of its founding in 1972 to more than 3,400 today.

The American Schools of Oriental Research (ASOR), founded in 1900, is a non-profit organization located at Boston University that is dedicated to the archaeology of the Near East. ASOR's mission is to initiate, encourage and support research into, and public understanding of, the peoples and cultures of the Near East from the earliest times.

The Association of Moving Image Archivists (AMIA) is a non-profit, professional membership association established to advance the field of moving image archiving by fostering cooperation among individuals and organizations concerned with the collection, preservation, exhibition and use of moving image materials. AMIA currently represents over 800 members worldwide and is a member of the Coordinating Council of Audiovisual Archives Association.

The College Art Association (CAA), the largest association for visual arts professionals, promotes the highest levels of creativity and scholarship in the practice, teaching, and interpretation of the visual arts. Founded in 1911, today CAA has 16,000 members including artists, art historians, archeologists, art librarians, curators, and art conservators. CAA is an advocate for the protection of cultural heritage.

The National Trust for Historic Preservation is a private nonprofit organization chartered by Congress in 1949 to facilitate public participation in the preservation of our nation’s heritage, and to further the historic preservation policy of the United States and internationally. With the backing of more than a quarter of a million members and supporters around the country, the National Trust works to protect significant historic

sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government.

The Society of American Archivists (SAA) is the world's largest organization of professional archivists, representing 4,800 members across the United States and in more than 20 nations. Archivists are the professionals who, among other things, are entrusted by society to ensure access to the records of the people's government, at all levels; to ensure the authenticity and integrity of those records; and to preserve and make accessible a credible and reasonably complete historical account of government and other aspects of society.

Society for American Archaeology (SAA) is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 7,200 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

The Society for Historical Archaeology (SHA) is the largest scholarly group concerned with the archaeology of the modern world with a membership of 2,500. SHA promotes scholarly research, the dissemination of knowledge concerning historical archaeology and the identification, excavation, interpretation, and conservation of sites and materials on land and underwater.

The United States Committee of the International Council on Monuments and Sites (US/ICOMOS) is a non-profit organization committed to heritage conservation and historic preservation at the national and international levels and is one of the more than 100 National Committees that make up the global alliance of ICOMOS. ICOMOS is one of the five major partners of the International Blues Shield initiative.

The World Monuments Fund (WMF) is the foremost private, nonprofit organization dedicated to the preservation of endangered architectural and cultural sites around the world. Since 1965, WMF has worked to protect historic structures at more than 550 sites in over 90 countries. Based in New York City, with offices and affiliates in Europe, WMF works with local partners and communities to identify and save important heritage through innovative programs of project planning, fieldwork, advocacy, grant-making, education, and on-site training. Every two years, WMF issues its World Monuments Watch List of 100 Most Endangered Sites, a global call to action on behalf of sites in need of immediate intervention.