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Statement 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. 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:

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