



U.S. Committee of the Blue Shield

Committed to the protection of cultural property worldwide during armed conflict and natural disaster

May 28, 2024

Dr. Alexandra Jones, Chair, Cultural Property Advisory Committee and
Members, Cultural Property Advisory Committee
U.S. Department of State
2200 C Street, NW
Washington, DC 20037

Dear Dr. Jones and Members of the Cultural Property Advisory Committee,

Thank you for the opportunity to comment¹ on the request submitted by the government of Ukraine for a bilateral agreement with the United States pursuant to Article 9 of the 1970 UNESCO Convention and the Convention on Cultural Property Implementation Act (CPIA), in particular 19 U.S.C. §§ 2602-2603. These comments are submitted on behalf of the U.S. Committee of the Blue Shield (“USCBS”), one of thirty-three national committees forming the network of Blue Shield International. USCBS was established in 2006 to promote the protection and preservation of cultural heritage during periods of armed conflict and natural disaster; promote the ratification and implementation of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols; work with the U.S. military and other entities to promote these goals, and provide public education concerning the preservation of cultural heritage.

As the Committee is aware, Ukraine has been the victim of unwarranted armed aggression from Russia since 2014, when Russia annexed Crimea and portions of the eastern part of Ukraine. In February 2022, Russia launched a full-scale invasion of Ukraine, which, unfortunately, is still ongoing with disastrous effects for the people of Ukraine, for their civilian life and infrastructure, and for their cultural heritage. Museums, churches, theaters, other historic structures, and structures devoted to the arts have been targeted causing significant damage and sometimes destruction. While these actions may constitute violations of the international law of armed conflict, as embodied in the 1954 Hague Convention, I write today only to consider the effects of this conflict on the movable cultural heritage of Ukraine and what the United States can do to discourage the theft and looting of cultural objects from Ukraine as a result of the armed conflict.

¹ I am a professor of law at DePaul University and specialize in legal issues concerning cultural heritage. I have served first as a member and subsequently as chair of the Cultural Property Advisory Committee in the Clinton and Obama administrations. I currently serve as the President of the Board of Directors of the US Committee of the Blue Shield (uscbs.org) and chair of the Blue Shield International Working Group on Trafficking of Cultural Objects as the result of Armed Conflict and Natural Disaster (<https://theblueshield.org/what-we-do/countering-trafficking/>). I submit these comments as President of USCBS and not in my personal capacity or in my capacity as a former CPAC member.

Again, as the Committee well knows, the only means by which a State Party may seek assistance from the United States is to submit a request to the United States for a bilateral agreement to impose import restrictions on designated categories of archaeological and/or ethnological objects; part of that request includes a demonstration that it satisfies the four required statutory determinations under 19 U.S.C. § 2602. USCBS expresses no opinion as to whether Ukraine has satisfied these four requirements. In addition to recommending whether a State Party has satisfied these requirements, the Committee has the option of further recommending that an emergency or crisis situation exists and that the Assistant Secretary of State should determine that import restrictions may be imposed as a temporary measure pursuant to an emergency action while an agreement is in the process of negotiation. Given the difficulties that Ukraine currently faces in combatting Russian forces, USCBS urges the Committee to consider this option provided under the emergency section of the CPIA, 19 U.S.C. § 2603, so that import restrictions may be imposed as quickly as possible and without need to negotiate a bilateral agreement.

The relevant section of the CPIA describes an emergency condition as:

- (a) "Emergency condition" defined. For purposes of this section, the term "emergency condition" means, with respect to any archaeological or ethnological material of any State Party, that such material is —
- (1) a newly discovered type of material which is of importance for the understanding of the history of mankind and is in jeopardy from pillage, dismantling, dispersal, or fragmentation;
 - (2) identifiable as coming from any site recognized to be of high cultural significance if such site is in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions; or
 - (3) a part of the remains of a particular culture or civilization, the record of which is in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions; ...

USCBS believes that the current situation in Ukraine qualifies as an emergency condition under both the second and third statutory definitions.

The looting and theft of archaeological and ethnological materials from Ukraine seem to fall into two categories. The first is “official” theft in which Russian government officials and military forces intentionally remove cultural objects, often from museums and churches, as well as archaeological sites. This process was illustrated and documented by thefts from the Kherson Art Museum in November 2022 as Russian forces withdrew from territory that Russia had temporarily occupied.² Russia seems to have taken these artworks to Crimea and, as was the case following the invasion in 2014, these objects may also be transported to Russia and placed in Russian

² Smithsonian Global, *Remotely Monitoring Ukraine’s Cultural Heritage with the Conflict Observatory* <<https://global.si.edu/projects/remotely-monitoring-ukraine%E2%80%99s-cultural-heritage-conflict-observatory>>. For the thefts from Kherson, see *Rapid Report: Kherson Regional Art Museum Reported Looting Event* (December 15, 2022) <https://hub.conflictobservatory.org/portal/apps/sites/#/home/pages/looting-1>; Michael Burleigh, *Russian looting in Ukraine war threatens to become the art world’s hidden shame* INEWS (September 18, 2023) https://inews.co.uk/opinion/russian-looting-ukraine-war-art-world-hidden-shame-2622988?ico=most_popular>. The removal of cultural objects from occupied territory is a violation of the First Protocol to the 1954 Hague Convention, to which both Ukraine and Russia are State Parties.

museums, such as the Hermitage. In the fall of 2023, a museum exhibit, entitled “Byzantine Gold”, of more than 200 objects taken from the churches of Tauric Chersonesos (located in Crimea) opened in the Russian city of Novgorod. In addition, an exhibit opened at the Tauric Chersonesos museum complex in the city of Sevastopol in Russian occupied Crimea of archaeological objects taken from the Stone Age site of Kamyana Mohyla located in the Russian occupied part of Ukraine’s Zaporizhzhya region.³ In another example, after kidnapping and threatening the museum’s curator, Russian forces stole 198 Scythian gold objects from the museum in Melitopol.⁴

Soon after the February 2022 invasion, the Russian Historical Society established an “inter-museum working group” that focuses on the occupied parts of Ukraine’s eastern Donetsk and Luhansk regions. The purpose of this group is, in part, to demonstrate that Ukraine’s culture does not exist independently but rather is a part of Russia’s cultural heritage. In November 2022, the representative of the Luhansk branch of the working group stated: “During trips to the territories where the main events of this year have happened, more than 4,000 items have been collected. Many of them are already being studied, and on the basis of these collections we have already opened four exhibitions in major Russian museums.”⁵ While import restrictions that the United States imposes may not inhibit these activities, it also cannot be ruled out that such cultural objects will eventually end up on the international market.

Perhaps more relevant to the Committee’s deliberations is the issue of “unofficial” theft—the large-scale thefts of cultural materials by Russian fighters, collaborators, police, and border guards, as well as artifact-hunting tourists from Russia, all of whom have engaged in looting in the occupied territories. In order to better understand what is occurring now and may occur later in the occupied territories, Samuel Hardy and Serhii Telizhenko conducted a study of the extent of looting in the areas of eastern Ukraine that have been occupied by Russia since 2014.⁶ The authors used data culled from texts and images posted on social media from artifact hunters—80 in Ukraine, 30 in Russia, five in Belarus, one each in Greece, Germany, Belgium, and Canada, nine in the United Kingdom and 53 in the United States.⁷ Archaeological artifacts, ranging from extremely rare medieval silver alloy adornments for horse harnesses, an eighteenth-century gold

³ Nikolai Berg and Robert Coalson, Radio Free Europe, ‘*Cultural Expropriation*’: *Russia Steps Up Seizures of Artifacts in Occupied Ukraine* (October 28, 2023) <<https://www.rferl.org/a/russia-ukraine-cultural-appropriation-artifacts-looted-war/32657653.html>>. The site contains petroglyphs ranging in age from the Paleolithic to the Bronze Age with some petroglyphs dating as late as the Scythian, Sarmatian, and Kyivan Rus’ periods. Ukraine placed the site of Kamyana Mohyla on its list of Tentative World Heritage Sites in 2006:

<<https://whc.unesco.org/en/tentativelists/5075/>>. See also *Kamyana Mohyla: Eastern Ukraine’s Ancient Stone Sanctuary* GOOGLE ARTS & CULTURE <<https://artsandculture.google.com/story/kamyana-mohyla-eastern-ukraine-39-s-ancient-stone-sanctuary-ministry-of-culture-and-information-policy-of-ukraine/-AUhCbIcQdgnZQ?hl=en>>.

⁴ Bill Whitaker, CBS News, *Ukraine accuses Russia of looting museums, destroying churches as part of heritage war* (November 12, 2023) <<https://www.cbsnews.com/news/ukraine-accuses-russia-museum-looting-church-destruction-60-minutes-transcript/>>.

⁵ Quoted in Berg and Coalson, *supra* note 3.

⁶ Samuel Andrew Hardy and Serhii Telizhenko, *Russia was ‘Doomed to Expand [its] Aggression’ Against Ukraine: Cultural Property Criminals’ Responses to the Invasion and Occupation of the Donbas Since 20th February 2014*, 14 THE HISTORIC ENVIRONMENT: POLICY & PRACTICE 286 (2023). <<https://www.tandfonline.com/doi/full/10.1080/17567505.2023.2251227>>.

⁷ The extent of involvement of individuals located in the United States is perhaps surprising. One artifact hunter in the United States noted that the finds were from digging of archaeological deposits, rather than chance finds on beaches. This same individual encouraged the targeting of historic villas on private land, as it was easier to evade detection, and indicated that he was aware that the law prohibited such activities. *Id.* at 289.

coin with a starting price of around EUR 480, medieval amulets and smaller artifacts such as ceramic vessels, bone combs, necklace beads, are being looted. The objects were overwhelmingly of metal, including bronze axes, bronze tweezers, Scythian arrowheads, spearheads, knives and swords; personal adornments, such as belt buckles, bracelets and pendants from different time periods; tools, such as spindles and related instruments; Scythian and Khazar horse harnesses and harness plaques; Alan/Sarmatian figurines; coins of Abbasid, Khazar, Mongol and Tatar types; Tatar horse harnesses, rings, necklaces and other adornments, bronze belts, and silver jewelry with Christian symbols.⁸ The looting has been so extensive that the looters complained online that they were having difficulty finding more sites to loot. Ancient and historic sites, including kurgan burials and previously excavated sites near Mariupol, were looted.⁹ The use of metal detectors was ubiquitous, even though the looters knew this activity was illegal under both Ukrainian and Russian law, and they went to some subterfuge to evade detection.¹⁰ “Internal and international metal-detecting tourism”¹¹ was conducted in the eastern territories that had been occupied since 2014. The looters looked forward to an expansion of the occupied territories with new sites to loot as the 2022 invasion progressed.

In addition, looting of archaeological sites has been known to occur as the result of the digging of trenches and other earthworks. It is very difficult to monitor archaeological sites because of the limited and remote access to sites on the frontline and in occupied and de-occupied territories and risks to the lives of those attempting to conduct field research.¹² From the time of the Russian occupation of Crimea in 2014 to more recently throughout the occupied areas of southern and eastern Ukraine, archaeological sites have been looted by the Russians.¹³ When Russia blew up the Kakhovka Dam in the summer of 2023, many archaeological sites were revealed, producing a significant threat of looting.¹⁴

The museums of Ukraine had documented their collections in the past. Another section of the CPIA, 19 U.S.C. § 2607, prohibits the import of stolen cultural property that has been documented in the collection of a public or religious institution. However, this documentation, which was generally not digitized before the 2014 invasion, has often been lost due to fires and bombing, has been taken by Russian forces or is located in museums in the occupied territories. As a result, this documentation is often not available to the Ukrainian government to prove that these objects were from a documented collection. The only way to stop the import of such objects is through import restrictions imposed under either section 2602 (bilateral agreement) or section 2603 (emergency action) of the CPIA.

⁸ *Id.* at 295-96.

⁹ *Id.* at 288.

¹⁰ It seems that the artifact hunters tended to purchase metal detectors in Russia, when they were able to do so, as there was less scrutiny of their actions. *Id.* at 293. It is becoming more difficult to regulate metal detectors because they are also used for locating land mines.

¹¹ *Id.*

¹² Pavlo S. Shydlovskiy, et al., *Archaeological Monitoring in War-Torn Ukraine* TAYLOR & FRANCIS ONLINE (May 4, 2023) [www.tandfonline.com/doi/abs/10.1080/17567505.2023.2209835](https://doi.org/10.1080/17567505.2023.2209835).

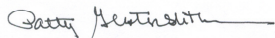
¹³ Ukraine Ministry of Culture and Information Policy (MCIP), *14 historical artifacts, stolen by Russians, have been returned to Ukraine* (October 20, 2023) <<https://mcip.gov.ua/en/news/14-historical-artifacts-stolen-by-russians-have-been-returned-to-ukraine/>>.

¹⁴ Jeffrey Gettleman, *It's Crazy: The Scramble for Ancient Treasures After Ukraine's Dam Disaster*, NEW YORK TIMES (August 4, 2023) <https://www.nytimes.com/2023/08/04/world/europe/ukraine-kakhovka-dam-artifacts.html>.

We know that objects from Ukraine have already appeared at the borders of the United States. During 2022, the United States intercepted more than 20 shipments with archaeological items.¹⁵ These objects include weaponry dating from the Neolithic period through to the Middle Ages. In March 2023, the United States returned a Neolithic-Eneolithic flint axe, two iron swords and an iron sword of the medieval period. The United States returned an additional fourteen cultural artifacts to Ukraine in October 2023.¹⁶ In September 2023, another group of archaeological items was transferred. It is thought that these may have originated from the area of the Kakhovka Dam, located in the Zaporizhzhya region, and were discovered through the use of metal detectors.¹⁷ Despite the successful interceptions of these shipments, import restrictions under the CPIA are still crucial to more effectively prevent the import of such objects into the United States.

USCBS submits that the current circumstances in Ukraine qualify as an emergency situation under both the second and third statutory definitions: that the objects looted from Ukraine are (2) “identifiable as coming from any site recognized to be of high cultural significance” and (3) “a part of the remains of a particular culture or civilization, the record of which is in jeopardy”. As the evidence from study of the looting that occurred and is still occurring in the occupied territories, under both definitions of an emergency situation, the looting of the cultural heritage of Ukraine constitutes “pillaging, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions”. Ukraine is an unfortunate but graphic example of the extensive looting of cultural heritage that often accompanies armed conflict and belligerent occupation. We urge the Committee to act as quickly and expeditiously as circumstances allow in order to ensure that the United States does not become the destination market for cultural objects looted and stolen from Ukraine during and as a result of the current situation of extreme conflict.

Thank you for the opportunity to submit these comments.



Patty Gerstenblith, J.D., Ph.D.
President, U.S. Committee of the Blue Shield

¹⁵ Ukraine Ministry of Culture and Information Policy (MCIP), *supra* note 13. According to Hardy and Telizhenko, one individual located in the United States had imported hundreds of looted antiquities, such as coins, adornments, instruments and weapons from Russia and Ukraine over the previous fifteen years. *Supra* note 6, at 297.

¹⁶ Ukraine Ministry of Culture and Information Policy (MCIP), *supra* note 13.

¹⁷ Berg & Coalson, *supra* note 3.