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REPORT BY THE DIRECTOR-GENERAL ON THE PREPARATION OF A DRAFT DECLARATION OF PRINCIPLES RELATING TO CULTURAL OBJECTS DISPLACED IN CONNECTION WITH THE SECOND WORLD WAR

SUMMARY

In pursuance of 33 C/Resolution 45 which invited the Director-General “to submit to it at its next session a draft of the declaration of principles relating to cultural objects displaced in connection with the Second World War after having convened an intergovernmental meeting to elaborate such a draft” and following 175 EX/Decision 16, the Director-General submits for consideration by the Executive Board and recommendation to the General Conference a draft declaration, outcome of an intergovernmental meeting (category II) the two sessions of which were convened at Headquarters in July 2006 and March 2007, respectively. The draft declaration embodies non-binding principles intended to provide general guidance for bilateral or multilateral interstate negotiations in order to facilitate the conclusion of agreements on cultural objects displaced in connection with the Second World War.

Document 34 C/22* which is annexed hereto is hereby submitted to the Executive Board for consideration.

Decision proposed: paragraph 4.

1. In pursuance of 33 C/Resolution 45 whereby the General Conference invited the Director-General “to submit to it at its next session a draft of the declaration of principles relating to cultural objects displaced in connection with the Second World War after having convened an intergovernmental meeting to elaborate such a draft” and following 175 EX/Decision 16, the Secretariat convened an intergovernmental meeting (category II), which held two sessions at Headquarters from 19 to 21 July 2006 and from 8 to 9 March 2007, respectively. The March 2007 session, attended by 72 UNESCO Member States, several observers, three intergovernmental organizations and two non-governmental organizations, resulted in the adoption by vote of a Draft Declaration.

2. The Draft Declaration, which is in an annex (Annex I) to document 34 C/22* (attached to the present document), containing the Preamble and 11 draft principles, is inspired by different

* This document has been distributed separately to Member States.

international, UNESCO and other legal instruments for the protection of cultural heritage. The main purpose of the Draft Declaration is to provide general guidance for bilateral or multilateral interstate negotiations in order to facilitate the conclusion of agreements related to cultural objects displaced in relation to the Second World War. The principles contained therein are oriented towards the future and not the past and, in consequence, they are not aimed at, nor should they be interpreted as, affecting any relevant international law on this issue.

3. In addition to the Draft Declaration, document 34 C/22 includes in Annex II a copy of the statements received from the six UNESCO Member States (Greece, Israel, Japan, Poland, the Russian Federation and Turkey) on the draft Principles and in Annex III a copy of the final report of the second (March 2007) session of the intergovernmental meeting. For the sake of brevity and conciseness of the General Conference documents, the list of participants of the July 2006 and March 2007 sessions, respectively, are not included therein. They are available upon request from the Secretariat.

4. The Director-General wishes to point out that the text of the Draft Declaration, although approved by a large majority of States participating in its elaboration, met with a strong objection from certain Member States. Taking into account that according to the multistage procedure for the elaboration, examination, adoption and follow-up of declarations, charters and similar standard-setting instruments adopted by the General Conference and not covered by the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution (33 C/Resolution 87), stage 3, every effort should be made to adopt the declaration by consensus, the Executive Board may wish to adopt a decision based on one of the two following options:

"The Executive Board,

1. Recalling 33 C/Resolution 45 which, among other things, invited the Director-General to submit to the 34th session of the General Conference, a draft declaration of principles relating to cultural objects displaced in connection with the Second World War and 175 EX/Decision 16,
2. Having examined document 177 EX/17,
3. Recommends the following draft resolution to the General Conference for adoption at its 34th session."

Option A:

"The General Conference,

1. Recalling 33 C/Resolution 45 which, among other things, invited the Director-General to submit to the 34th session of the General Conference, a draft declaration of principles relating to cultural objects displaced in connection with the Second World War and 177 EX/Decision 17,
2. Having examined document 34 C/22,
3. Adopts the Draft UNESCO Declaration of Principles Relating to Cultural Objects Displaced in Connection with the Second World War as contained in document 34 C/22."

or

Option B:

"The General Conference,

1. Recalling 33 C/Resolution 45 which, among other things, invited the Director-General to submit to the 34th session of the General Conference, a draft declaration of principles relating to cultural objects displaced in connection with the Second World War and 177 EX/Decision 17,
2. Having examined document 34 C/22,
3. Noting that a consensus cannot be reached among Member States on the content of the draft declaration of principles relating to cultural objects displaced in connection with the Second World War as presented in document 34 C/22,
4. Refers the draft declaration of principles relating to cultural objects displaced in connection with the Second World War as contained in document 34 C/22 to the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, for further consideration and recommends that the Committee remain actively seized by this issue and further study its overall legal and other aspects."



United Nations
Educational, Scientific and
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Organisation
des Nations Unies
pour l'éducation,
la science et la culture

Organización
de las Naciones Unidas
para la Educación,
la Ciencia y la Cultura

Организация
Объединенных Наций по
вопросам образования,
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منظمة الأمم المتحدة
للتربية والعلم والثقافة

联合国教育、
科学及文化组织

General Conference
34th session, Paris 2007

Conférence générale
34^e session, Paris 2007

Conferencia General
34^a reunión, París 2007

Генеральная конференция
34-я сессия, Париж 2007 г.

المؤتمر العام
الدورة الرابعة والثلاثون، باريس ٢٠٠٧

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DRAFT DECLARATION OF PRINCIPLES RELATING TO CULTURAL OBJECTS DISPLACED IN CONNECTION WITH THE SECOND WORLD WAR

OUTLINE

Source: 33 C/Resolution 45.

Background: In pursuance of this resolution, the Director-General was invited to submit, to the General Conference at its 34th session, a draft Declaration of Principles Relating to Cultural Objects Displaced in Connection with the Second World War.

Purpose: In accordance with stage 3 of the multistage procedure for the elaboration, examination, adoption and follow-up of declarations, charters and similar standard-setting instruments adopted by the General Conference and not covered by the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution (33 C/Resolution 87), the Director-General submits for possible adoption a draft declaration of principles relating to cultural objects displaced in connection with the Second World War which embodies the principles providing general guidance for bilateral or multilateral interstate negotiations in order to facilitate the conclusion of agreements on cultural objects displaced in connection with the Second World War.

This document will be examined by the Executive Board at its 177th session. The decision adopted by the Executive Board on this item will be submitted to the General Conference through an addendum to the present document.

1. This document is submitted to the General Conference in pursuance of 33 C/Resolution 45 which invited the Director-General to submit to the General Conference at its 34th session a draft declaration of principles relating to cultural objects displaced in connection with the Second World War. It contains the Draft Declaration resulting from the two sessions of the intergovernmental meeting held in July 2006 and March 2007, respectively, in Paris (Annex I), statements on the draft declaration received from the six Member States (Greece, Israel, Japan, Poland, the Russian Federation and Turkey) (Annex II), and the final report of the second session (March 2007) of the meeting (Annex III).
2. It should be stressed that the main purpose of the draft principles is to propose a non-binding reference framework for bilateral or multilateral interstate negotiations in order to facilitate the conclusion of agreements related to cultural objects displaced in relation to the Second World War. The draft principles contained therein are oriented towards the future and not the past and, in consequence, they are not aimed at, nor should they be interpreted as, affecting any relevant international law on this issue.
3. In conformity with stage 3 of the *Multi-stage procedure for the elaboration, examination, adoption and follow-up of declarations, charters and similar standard-setting instruments adopted by the General Conference and not covered by the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Convention (cf. 33 C/Resolution 87)*, the General Conference shall examine and discuss the Draft Declaration submitted to it, together with the recommendations of the Executive Board thereon. This item will be examined by the Executive Board at its 177th session and its recommendations will be submitted to the General Conference through an addendum to the present document.

ANNEX I

DRAFT DECLARATION OF PRINCIPLES RELATING TO CULTURAL OBJECTS DISPLACED IN CONNECTION WITH THE SECOND WORLD WAR

Considering the tragic events that took place in relation to the Second World War, where many cultural objects were destroyed, lost or displaced,

Having in mind the relevant regulations of the Annex to the 1907 Fourth Hague Convention (Regulations Respecting the Laws and Customs of War on Land),

Acknowledging the 1998 Washington Conference Principles on Nazi-Confiscated Art and the 2000 Vilnius Declaration to Facilitate the Restitution of Disputed Works, and noting the essential role of non-governmental participants in successful practices and procedures based on those documents,

Noting with appreciation the growing number of returns of cultural objects displaced in relation to the Second World War, and that such returns should be further encouraged by the international community,

Acknowledging that to date only some countries have adopted national legislation or other measures to regulate or resolve such displacements that are consistent with applicable international law,

Encouraging States to develop national processes to take into account the following Principles,

Noting with concern that a number of issues related to cultural objects displaced in relation to the Second World War have not yet been settled,

Also noting that the return of cultural objects to their countries of origin is a major concern of many countries,

Urges States concerned to resolve disputes on the return of cultural objects displaced in relation to the Second World War, taking into account, as appropriate, the following principles:

PRINCIPLE I

Scope of Application:

These Principles are of a non-binding character and are intended to provide general guidance for bilateral or multilateral interstate negotiations in order to facilitate the conclusion of agreements related to cultural objects. Under these Principles "Cultural Objects" means objects, which:

- (i) are listed in Article 1 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and
- (ii) have been removed from, or the possession of which has been lost within, a territory during or in connection with hostilities or occupation related to the Second World War, even if such occupation was total or partial or had met with no armed resistance.

PRINCIPLE II

Meaning of Loss of Possession or Removal:

These Principles apply to any loss of possession or removal where there are reasonable grounds to conclude that the Cultural Objects concerned:

- (i) were looted or plundered; or
- (ii) were appropriated in a manner contrary to the law in force in the territory where they were located at the time, or appropriated in a manner in conformity with a law or a judicial or administrative measure, the recognition of which would be offensive to the principles of humanity and dictates of public conscience; or
- (iii) were transferred pursuant to a transaction apparently, but not actually legal, or vitiated for whatever reason, even when the transaction purports to have been voluntarily effected; or
- (iv) had otherwise left the possession of a person or an entity in circumstances deemed offensive to the principles of humanity and dictates of public conscience.

PRINCIPLE III

Measures that should be taken by the Responsible State:

- (i) A State, being also the State of location, that was responsible for the loss of possession or removal of Cultural Objects, should return such objects to the competent authorities of the territory from which they were removed or where their possession was lost.
- (ii) A State, not being the State of location that was responsible for the loss of possession or removal of Cultural Objects, should participate in the search for and in negotiations to secure the return of such objects.

PRINCIPLE IV

Multiple Responsible States:

Where more than one State is responsible for the same or successive acts of removal or loss(es) of possession of a Cultural Object, each of these States shall be considered as a responsible State within the meaning of these Principles.

PRINCIPLE V

Measures that should be taken by the State of Location or Depositary State:

- (i) States, other than responsible States within the meaning of these Principles, within whose territory the Cultural Objects are currently located for reasons other than deposit, should take appropriate steps to promote and facilitate their return to the competent authorities of the territory from which they were removed or where their possession was lost.
- (ii) States that are recipients of Cultural Objects deposited in their care by another State for the purpose of protecting the objects against the dangers of the events referred to in

Principle I should secure their return to the competent authorities of the territory from which they were removed or where their possession was lost and should, within the limits of their domestic law, prohibit their export until such return.

PRINCIPLE VI

Measures that should be taken by the Recipient State:

The competent authorities of the territory to which the Cultural Objects have been returned, should exercise due diligence to seek out and identify the person or the entity, if any, which was entitled to the Cultural Objects at the time the loss of possession occurred, or the successor to that person or entity, and to return these objects to such a person or entity.

PRINCIPLE VII

Successive Displacements:

Where there have been successive displacements, the Cultural Objects should be returned to the competent authorities of the territory where they were located immediately before the first removal or loss of possession as referred to in Principle I.

PRINCIPLE VIII

Documentation:

Cultural Objects being returned should be accompanied by the relevant scientific, technical and legal documentation available.

PRINCIPLE IX

Exclusion of War Reparations:

Cultural Objects referred to in Principle I shall never be retained as war reparations.

PRINCIPLE X

Time Limit:

No time limits apply to the above Principles.

PRINCIPLE XI

Relationship to International Law:

Nothing in these Principles shall be interpreted as amending, abrogating or replacing relevant international law.

ANNEX II

GREECE

Proposal for a new Principle, to be inserted between current Principles II and III:

“Any State in whose territory cultural objects are located should inform the competent authorities of the territory from which they were displaced or from where their possession was lost.”

Proposal to add at the end of paragraph (ii) of Principle III: “[...], if so requested”.

ISRAEL

Suggestions for Principle V (the additional language is written in bold):

- (i) States, other than ... to promote and facilitate **the return of Cultural Objects removed from public sites** to the competent authorities ...”.
- (ii) **States, other than responsible States within the meaning of these Principles, within whose territory the Cultural Objects are currently located for reasons other than deposit, should take appropriate steps to promote and facilitate the return of Cultural Objects removed from private persons or entities to the private persons and entities or their successors, which were entitled to the Cultural Objects at the time the loss of possession occurred.**
- (iii) **In case there is no evidence of the origin of the Cultural Objects, the Cultural Objects should be considered as public.**
- (iv) States that are recipients of Cultural Objects deposited in their care by another State for the purpose of protecting the objects against the danger **of** the events referred to in Principle I should secure their return to the competent authorities of the territory from which they were removed or **to the persons and entities or their successors, which were entitled to the Cultural Objects at the time the loss of possession occurred** and, should, within the limits of their domestic law, prohibit their export until such return.

JAPAN

It is regrettable that the “Draft Declaration of Principles Relating to Cultural Objects Displaced in Relation to the Second World War” was adopted at the second intergovernmental meeting of UNESCO in March 2007 by voting, in spite of the objections from some delegations and of the rules of procedure of the meeting, which require participants to endeavor to make decisions by consensus. A declaration is not legally binding and its legitimacy fully depends on the support of the Member States. Therefore, a declaration will not be widely accepted unless it is adopted by consensus. Nevertheless, the voting result of the draft declaration at the intergovernmental meeting was far from consensus and it is the position of our government that this declaration should not be adopted in the absence of consensus.

The discussions in the intergovernmental meeting revealed that some significant issues concerning the scope of the draft declaration had not been fully considered. At the meeting, not a few delegations raised questions and objections, such as, “Why does the draft declaration limit its scope to cultural objects displaced in relation to the Second World War?” or, “Why does it exclude from its scope the question of possible return of cultural objects to their countries of origin?”. Such

questions should be discussed thoroughly before adopting the draft declaration in the current form at the 34th session of the General Conference, since they are deemed to be relevant in ensuring that the draft declaration be balanced.

Moreover, it is not totally practical to apply this draft declaration to actual cases because the definitions and concepts laid down in it are not clear, as follows:

- (a) The Cultural Objects which are to be covered by this draft declaration are defined as cultural objects which “have been removed from, or the possession of which has been lost within, a territory during or in connection with hostilities or occupation related to the Second World War, even if such occupation was total or partial or had met with no armed resistance” (Principle I(ii)). First of all, no definitions are given to “Second World War” and what does “related to” mean? It is also not clear at all what kind of actions “removed from” means.
- (b) It is too difficult to judge to which cases of “loss of possession or removal” this draft declaration is applicable since the meaning of “Loss of Possession or Removal” (Principle II) is extremely abstract and ambiguous, even though the draft declaration lists cases where “the recognition of which would be offensive to the principles of humanity and dictates of public conscience”(ii) or “(the cultural objects concerned) were transferred pursuant to a transaction apparently, but not actually, legal, or vitiated for whatever reason, even when the transaction purports to have been voluntarily effected”(iii).
- (c) Neither is it clear at all in which case and what State would be described as “a State... that was responsible for the loss of possession or removal of Cultural Objects” (Principle III (i)).

Japan reserves the right to submit any additional comments by or during the 34th session of the General Conference.

POLAND

Warsaw, 25 May, 2007

DPD/860/07/ER

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The Position of Poland Concerning the Substance and the Proceeding of Works on the Preparation of the Draft Declaration of Principles Relating to Cultural Objects Displaced in Connection with the Second World War

With reference to the substance and the proceedings of works on the preparation of the draft Declaration of Principles Relating to Cultural Objects Displaced in Connection with the Second World War, Poland would like to express its deep concern about the existing procedure and the effects of such procedure. The draft Declaration, in its present form, cannot be approved by Poland and will not be supported by Poland until it is amended to eliminate the present conflict-generating solutions which weaken the solidarity and unity of UNESCO Members.

While formulating its position, Poland refers to the long and established tradition of mutual friendly cooperation of UNESCO Member States. We would like to expressly emphasize that, for the first time in the history of UNESCO, a draft declaration of UNESCO results in sharp divisions among Member States, undermining the existing principles of respect for their interests by introducing non-constructive solutions, not based on international practice. UNESCO, as a universal international organization which coordinates measures aimed at the development of the international collaboration in cultural, educational and scientific domains, establishes its standards by laying down international laws in these areas and encouraging the international community to take joint measures. It accomplishes its objectives by reaching agreements between States, acting as the promoter of the dialogue between nations and civilizations. The protection of the cultural heritage stimulates international cooperation in the area of culture, which is directly supported by normative acts adopted by virtue of intergovernmental negotiations and other multiple programmes.

Poland would like to note that the Declaration of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) is not a legally binding document. It does not constitute a source of international law. It serves only as a political act, indicating possible procedures and forms of solving a particular issue, in this case the issue of cultural objects displaced in connection with the Second World War. Hence, in international relations, both bilateral and multimedia, particular States may build their mutual relations on the said Declaration at their own discretion only, and not due to legal norms. Despite such a status of the future Declaration of Principles Relating to Cultural Objects Displaced in Connection with the Second World War, it will be of material significance in the interpretation of the international law by particular States, being an example of the States' practices. Such an interpretation may vary among UNESCO Member States. Seemingly non-obligatory nature of the said declaration will become much more important in practice. The Declaration will probably be a "prelude" to legal solutions which will set trends for further normative works, until a convention is potentially drawn up which will almost certainly be entitled: on Principles Relating to Cultural Objects Displaced in Connection with the Second World War. The potential convention will in all probability refer to the Declaration of Principles Relating to Cultural Objects Displaced in Connection with the Second World War as an instrument of major political importance in this area of international relations, as was the case in, for example, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, done in Paris on 17 November 1970 (Polish Journal of Laws of 30 May 1974, No. 20, item 106). This Convention refers to one of previous declarations, ranking it extremely high: "The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12 October to 14 November 1970, at its sixteenth session, recalling the importance of the provisions contained in the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference at its fourteenth session (...)".

Poland is of the opinion that the draft Declaration, when adopted by UNESCO, will be popularized as a "quasi-compulsory" procedure in cases of cultural objects displaced in connection with the Second World War. As it is possible to induce a belief in the international community (against the essence of the Declaration) that, actually, it constitutes a required, thus obligatory, procedure. This observation is of importance in relation to Principle VII which excludes the possibility of retaining cultural objects which "may never be retained as war reparations". In other words, the Declaration aims to exclude restitution in kind (*resitutio in genere*) and the duty to redress damage, in the area of culture in this case, by the States responsible for the outbreak of the Second World War. Thus, the Declaration stipulates a sort of "international promise", acting as consent to further international measures concerning the return of cultural objects displaced in connection with the Second World War, excluding the elementary principle of justice in international relations expressed as the obligation to ensure restitution and, in certain cases, also compensation and reparations from the State responsible for war and war damage. It should be explicitly noted here that Poland suffered an extremely high loss of cultural objects in connection with the Second World War. The complexity and sensitivity of international relations between the States directly interested in the issues of the Declaration make it impossible for Poland to support

the draft Declaration in its present form by the time the provision on equivalents, i.e. restitution in kind (Principle XII) has been restored, as a minimum.

Having regard for the principle of the equality of UNESCO Member States and the principle of no discrimination against any Member State, the exclusion of restitution in kind should be deemed as the violation of these principles. Although the principle of equality is never absolute and it has been deviated from on various occasions, however, there is always an objective criterion justifying inequality, i.e. which complies with the law, including diverse principles, e.g., the principle of justice. In these circumstances, the Declaration provides for an inequality of subjects, and only a few of them are beneficiaries of the adopted solution. The States responsible for the Second World War cannot be made equal with their victims, thus causing additional harm to them. Furthermore, the issue of the return of cultural objects displaced in connection with the Second World War may not override the principles and customs deeply rooted in the international law which stipulate the aggrieved party's right to demand restitution in kind or, in certain circumstances, appropriate compensation. Therefore, Poland cannot accept the Declaration as long as the disputed principle has not been modified to ensure explicitly that "the Declaration does not contravene the rights of the States being the victims of the Second World War to retain displaced cultural objects in connection with the Second World War".

Poland, invoking UNESCO goals, is of the opinion that the draft Declaration is of unjustified fragmentary nature, and the interest of the international community calls for a more extensive regulation of the return of cultural objects. Hence, it would be justified either to expand the scope of the prepared Declaration to include war conflicts and colonialism in the 19th and 20th centuries or to prepare and simultaneously adopt another declaration concerning war conflicts and colonialism in the two previous centuries which would contain corresponding instrumental solutions. Such a regulation would satisfy the expectations of other UNESCO Members seeking the return of cultural objects and an expression of concern about the world heritage.

Furthermore, Poland would like to focus on a number of procedural irregularities during works on the draft Declaration which were carried out in the manner ensuring absolute adoption of solutions challenged by various UNESCO Member States, which cannot be accepted by Poland, including irregularities in the negotiation procedure, e.g. imprecise formulation of certain issues to be voted or reducing the debate to technical issues which resulted in the underestimation or disparagement of the specific positions of the parties.

Kazimierz Michał Ujazdowski
Minister of Culture and National Heritage

RUSSIAN FEDERATION

COMMENTS BY THE RUSSIAN FEDERATION

on the draft declaration of principles relating to cultural objects displaced in connection with the Second World War

The draft report quite clearly inadequately reflects the position of the Russian Federation at the second intergovernmental meeting held in March 2007 on the drafting of the declaration. Thus, as the Russian side sees it, in drafting the preamble there is a need, first of all, to take a historical approach, and before expanding any principles concerning the return of cultural objects at the present time, to explain why and how the very issue of cultural objects displaced in connection with the Second World War arose in international relations. This is presented succinctly in the draft preambular provisions submitted by the Russian side. We also proposed that the preamble contain a reference to the 1943 London Declaration, which is still of relevance today.

During the second intergovernmental meeting, the Russian draft of the preamble was in fact removed from plenary discussion and referred for consideration to a working group that met outside the purview of the plenary meeting. Since the text of the preamble was being examined for the first time, and given that no vote was held on the text proposed by the Russian side, our position is that the text of the Russian proposal should be maintained and be placed in square brackets in the draft declaration.

In the course of the meeting, the Russian delegation made a whole series of concrete proposals of a substantive nature on the text of the draft declaration. For example, in subparagraph (ii) of Principle I, and also in Principle V, it was proposed to add that the items concerned were cultural objects which had been displaced illegally.

It was stated in particular that the Russian Federation found some of the provisions of Principle II unacceptable, and that Principles III and IV failed to specify which State was regarded as responsible for the loss of property or the removal of cultural objects – any State or the aggressor State.

The Russian delegation pointed out that Principle IX stipulated the inadmissibility of retaining cultural objects as war reparations. At the same time, no mention was made anywhere of the question of the restitution of cultural objects which had been looted and illegally exported by States which had committed an act of aggression. In that connection, it was proposed to delete Principle IX and to include, in its place, a provision for alternative compensation.

Since the aforesaid proposals were voiced by the Russian delegation in the course of the meeting, but shortage of time in fact prevented their discussion, it would be fitting to reflect these proposals in the report, noting that they were not discussed for lack of time. There are grounds in this case for insisting on inclusion of the Russian proposals in the text of the draft declaration in square brackets.

11 May 2007

TURKEY

- The following phrase should be added as a fourth subparagraph to the Preamble: “Recalling Article 2, para. 1, of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which stipulates that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and thus further encouraging the eventual return of the objects to their countries of origin where they were created.”
- The definitions of the “State of location”, “depository State”, “responsible State”, “recipient State” and “territory of origin” should be made, preferably under Principle I.
- The following phrase should be added as a third subparagraph to Principles III and IV: “In cases where the cultural objects removed in connection with the Second World War from a country different from the country of origin of the said objects and where these objects were illicitly transferred or exported from their country of origin at a date prior to the Second World War, the said objects should be returned to the competent authorities of the country of origin.”
- Principle VII should be amended as follows: “Where there have been successive displacements and where these objects were illicitly transferred or exported from their country of origin, the cultural objects should be returned to the competent authorities of the territory of origin.”

NON-PAPER

Turkey, as a country whose rich cultural heritage has suffered from illegal exportation and transfer since the beginning of the 19th century, firmly believes in the necessity of the restitution of the illegally exported cultural property to its country of origin.

Being a party to the “1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property” since 1981, we support UNESCO’s efforts in this field, especially through the Intergovernmental Committee for Promoting Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP).

Despite the growing number of voluntary returns of cultural property to its country of origin, the restitution process in general is far from being satisfactory and the outstanding problems in this respect should be handled in a proactive and efficient manner.

We, in principle, believe that restitution issues should not be confined to certain periods of history, but should be dealt with in a general and inclusive approach through international instruments and channels as well as negotiated bilateral settlements.

However, we are conscious that there is a General Conference resolution stipulating that a non-binding “Declaration of Principles” be prepared on the cultural objects displaced in relation to the Second World War. We are also recognizant of the fact that this exercise has already started and has actually come to a certain stage. At this juncture, we deem it important to reiterate that the principles which are to be elaborated:

- should be in conformity with the existing international law on the return of cultural objects, particularly the 1970 Convention;
- should be formulated in a non-binding manner and not lead to a future normative initiative, unless it covers the restitution issues in general.

Furthermore, the present draft only refers to the return of cultural objects to the “competent authorities of the territory from which they were removed or where their possession was lost”. It does not mention their return to their country of origin. Whereas, in some cases the territory from which the cultural objects were removed is actually different from the territory of origin. Keeping in conformity with the 1970 Convention, the draft text should, therefore, include the principle of “return of the cultural objects to the competent authorities of the territory of origin, in cases where the cultural objects removed in connection with the Second World War from a territory is different from the territory of origin of the said objects.

ANNEX III

Intergovernmental Meeting on the Preparation of a Declaration of Principles relating to Cultural Objects displaced in Connection with the Second World War Second Session (Paris, 8-9 March 2007) – Final Report

1. Pursuant to 33 C/Resolution 45, adopted by the General Conference at its 33rd session, which invited the Director-General to submit to the General Conference at its 34th session a Draft Declaration of Principles relating to cultural objects displaced in connection with the Second World War after having convened an intergovernmental meeting to elaborate such a draft, an Intergovernmental Meeting on the Preparation of a Declaration of Principles relating to cultural objects displaced in connection with the Second World War was organized at UNESCO from 19 to 21 July 2006.
2. Following an intensive debate, the July 2006 meeting amended and adopted in first reading the draft of the principles to be contained in the Draft Declaration of Principles relating to cultural objects displaced in connection with the Second World War (“the Draft Declaration”). Owing to time constraints the Preamble was not examined and two draft Principles were still in square brackets.
3. In order to complete its work on the preparation of a Draft Declaration, the meeting recommended that a second session be organized and that Member States provide extrabudgetary funds to finance such a session.
4. The Executive Board considered this issue at its 175th session (26 September 2006-13 October 2006) and adopted 175 EX/Decision 16 which, among other things, requested the Director-General to examine further this issue and, after consultation with the Member States of the Executive Board, to decide the most appropriate course of action in order to implement 33 C/Resolution 45. 175 EX/Decision 16 also requested Member States to provide extrabudgetary funds to cover possible costs relating to the follow-up of the decisions taken by the Director-General.
5. Pursuant to 175 EX/Decision 16, Ms Françoise Rivière, Assistant Director-General for Culture, organized such consultations on 5 December 2006. The majority of Board Members were in favour of having a second session of the intergovernmental meeting in order to complete the work on the Draft Declaration.
6. Such second session took place from 8 to 9 March 2007 at UNESCO Headquarters. Seventy-two States (Algeria, Angola, Argentina, Australia, Austria, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Dominica, the Democratic People’s Republic of Korea, Ecuador, Egypt, El Salvador, Estonia, Finland, France, the former Yugoslav Republic of Macedonia, Germany, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Israel, Italy, Japan, Jordan, Lebanon, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Mauritius, Mexico, Monaco, Morocco, the Netherlands, Norway, Panama, Peru, Poland, Portugal, Republic of Korea, Romania, the Russian Federation, Saudi Arabia, Senegal, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, the United Kingdom, Ukraine, the United States of America and Venezuela) took part in the meeting. The Holy See and Palestine assisted in the meeting. The African Union, the European Parliament and the Islamic Educational, Scientific and Cultural Organization were represented. Finally, observers from the International Council on Archives and the World Fellowship of Buddhists were also present.
7. In his opening statement, the Director-General reiterated the purpose of the second session of the meeting, namely to examine the Preamble and the two draft Principles that have not yet been adopted, with a view to submitting to the 34th session of the General Conference as much as

possible consensual text. He went on to underscore the future-oriented approach of the Principles as well as their non-binding character enabling Member States to use all of them, some of them or none of them when conducting bilateral or multilateral negotiations on this subject. The Director-General then concluded by thanking China, Lithuania and Switzerland for providing extrabudgetary contributions to partially cover costs of interpretation of debates into UNESCO's six official languages.

8. The meeting then turned to item 4 of the Agenda – Elaboration of the Draft Declaration – and started considering the draft Preamble. The discussion of the draft Preamble during the two days of the second session may be summarized as follows:

- Insertion of a new preambular paragraph (current first paragraph) underlining the gravity of events occurring in relation to the Second World War that resulted in the destruction, loss or displacement of cultural objects;
- Rejection of an insert of a specific provision on the “aggressor States” and “affected States” as well as of a particular reference to the Nuremberg Trials with regard to prosecution and punishment of persons guilty of looting of cultural objects. In this context, a number of delegations underscored the purpose of the Draft Declaration as a future-oriented instrument and not an appropriate forum for determining State responsibility for the waging of the Second World War;
- Addition of a new preambular paragraph (current second paragraph) referring to the Annex (Regulations Respecting the Laws and Customs of War on Land) to the Fourth 1907 Hague Convention Respecting the Laws and Customs of War on Land;
- Insertion of a new preambular paragraph (current third paragraph) acknowledging the 1998 Washington Conference Principles on Nazi-Confiscated Art and the 2000 Vilnius Declaration to Facilitate the Restitution of Disputed Works, as well as the related role of non-governmental actors in successful practices and procedures based on those documents. In particular, the role of alternative dispute resolution mechanisms was reiterated;
- When discussing the current fourth preambular paragraph, a number of delegations decided to delete the reference to the word “voluntarily” in order not to narrow the scope of this paragraph;
- In comparison with the final text of the July 2006 first session of the intergovernmental meeting, the new fifth Preambular paragraph was redrafted with a view to reflecting the fact that only some countries' national legislation or other measures are consistent with the relevant international law on this issue. The discussion revealed diverging views as to one Member State's national legislation on this issue and it was pointed out that national legislation has to be consistent with and is subordinated to applicable international law; and
- The participants decided to insert a new preambular paragraph (current eighth paragraph) related to the major concern of many developing countries to reflect the loss of cultural objects and the importance of their return to their countries of origin as expressed during the meeting.

9. On Thursday, 8 March 2007 at the closure of business, the Chairperson proposed establishing an open-ended working group in the evening. This group, composed of representatives of 22 countries (Algeria, Belarus, Belgium, Canada, the Czech Republic, Germany, Greece, Hungary, India, Indonesia, Italy, Japan, Lithuania, Madagascar, the Netherlands, the Russian Federation, Serbia, Sweden, Switzerland, Turkey, the United Kingdom and the United States of America) further considered the draft Preamble and, in particular, detailed amendments submitted by one Member State related essentially to the issue of “aggressor States” with regard to the Second World War, the reference to be made to the Nuremberg Trials, the fact that the

damage caused to cultural objects has not been fully repaired, the relevancy of the 1943 London Declaration, the importance of the principle of reciprocity when dealing with the Second World War displaced cultural objects, the place and role of national legislation and the principle of compensatory restitution, among other things.

10. A large majority of participants opposed the introduction of such amendments by referring again to the character of the Draft Declaration as a future-oriented document within the sense of draft Principle I. With regard to the question of compensatory restitution, draft Principle IX has already excluded it.

11. The meeting then turned to the consideration of the second paragraph of draft Principle VII related to exceptional cases of successive displacements such as a temporary exhibition. Following a debate, this paragraph was deleted because the purpose of draft Principle VII was to regulate general issues related to successive displacements and not to single out exceptional situations.

12. Afterwards, the meeting focused its work on draft Principle XII related to the destroyed or lost cultural objects. During the discussion on this issue a number of States objected to the inclusion of this draft Principle in the Draft Declaration by stressing its contradictory character (e.g. impossibility of the return of objects which no longer exist) and underscoring the Declaration's purpose (e.g. future-oriented). Finally, following a vote, this draft Principle was not retained.

13. The Chairperson, noting the end of the examination of the draft Preamble and the adoption of all of the preambular paragraphs of the Draft Declaration, proposed to the participants that they adopt as a whole the draft Principles accepted by consensus at the first session in July 2006 without reopening the debate. As some Delegations objected to that procedure, the proposal was put to the vote and was adopted by an overwhelming majority (36 votes for, six against and five abstentions). The Chairperson then proposed that the Delegations express their views on the draft Principles as a whole and make remarks and comments. As some of the Delegations had submitted substantive amendments to the Plenary, it was decided that the proposed amendments and statements of a general nature should be transmitted at a later date in writing to the Secretariat and would be reflected in the report that the Director-General would submit to the Executive Board.

14. She went on to say that the Secretariat is to compare both its language versions, introduce all the necessary editorial changes and align the French version to the English one.

15. The meeting resulted in the adoption of the Draft Declaration through a vote. The 28 UNESCO Member States voted on Friday, 9 March 2007 in favour of the adoption of the Draft Declaration, three States voted against and two States abstained.