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Cultural Organization

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REPORT OF THE COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS

1. The Committee on Conventions and Recommendations (CR) held three public working meetings on 1 and 2 April 2010, with Mr Maurizio Enrico Serra, representative of Italy, in the Chair. It met on 13 April 2010 to adopt this report. In accordance with Rule 16.2 of the Rules of Procedure of the Executive Board, the CR Committee elected Ms Martina Nibbeling-Wriessnig, representative of Germany, temporary Chairperson.

2. The Committee examined the agenda items below:

Item 19 Review by the Committee on Conventions and Recommendations of the working methods within the framework of 104 EX/Decision 3.3 (184 EX/19 Part I and II)

3. In her introduction, after reminding the Committee that the examination of this item had been on the agenda of the CR Committee since the 181st session of the Board, the representative of the Director-General and Legal Adviser, on the subject of Part I, said that the Secretariat had included in this document the eight proposals received from the CR Committee members aimed at increasing the visibility of the "104 procedure" in all regions. She then pointed out that in Part II the Secretariat had updated the study it had carried out in 2003 in which it had compared the "104 procedure" with those of United Nations human rights bodies in the light of recent developments within the United Nations system. Lastly, she recalled that the Board had decided at its 182nd session to establish, within the CR Committee and without any financial implications, an open-ended ad hoc working group to examine ways and means of improving the working methods of the Committee, whose operational procedures should be determined at the current session (paragraph 11 of 182 EX/Decision 30).

4. Some members of the Committee stressed the need to review the working methods of the Committee in order to enhance the spirit of international cooperation, conciliation and mutual understanding, as well as consensus, within the Committee. Those members considered it essential that Committee practices in relation to the "104 procedure", adopted previously in a different geopolitical context, needed to be updated to reflect those currently in use in other United Nations human rights bodies. They considered that the working group should be established and concentrate its work on concerns already raised at previous Committee sessions, but also on those raised at the current session, such as the participation of governments in Committee debates, the excessive length of time spent on examining certain communications and the interpretation of certain admissibility criteria contained in paragraph 14(a) of 104 EX/Decision 3.3, so that, the

Committee could not be perceived by the governments concerned as a judicial body. Likewise, some of the members who spoke pointed out that document 184 EX/19 Part II should have more closely examined recent changes within the United Nations system and should also have included critical remarks about the “104 procedure”.

5. Other Committee members recalled that 182 EX/Decision 30 was the product of consensus within the CR Committee and had mandated the working group to examine ways of improving the working methods of the Committee, not to amend the provisions of 104 EX/Decision 3.3. Those members pointed out that the working methods could well be improved without encroaching upon the humanitarian nature of the 104 procedure, and that the changes made within the United Nations system had not made the text of 104 EX/Decision 3.3 obsolete, especially with regard to admissibility criteria. In their view, the “104 procedure” retained its specific features, including in terms of its complementarity with other United Nations bodies responsible for the protection and promotion of human rights in accordance with 104 EX/Decision 3.3 and the non-judicial role of the CR Committee. In addition, some of the members who spoke said they were satisfied with the working documents prepared by the Secretariat but would have liked the Committee to examine, at the current session, the first proposals of Member States to improve the Committee’s visibility.

6. Committee members then examined the draft decision contained in document 184 EX/CR/DR.1, submitted in the absence of a draft decision on the functioning of the working group in the documents. During its review, one part of paragraphs 5 to 7 of the draft decision was amended.

7. In conclusion, following informal consultations on paragraph 6, subparagraph (c), of the draft decision, the Committee decided that the open-ended working group would consider, with special attention, all the concerns expressed by Committee members about the working methods, practices and modalities of the Committee. To ensure that the working group could fully carry out its mandate and submit a detailed proposal to the 185th session of the Executive Board on this issue, the members of the Committee requested the Board to grant the Committee two additional working days during its next session and invited the Director-General to seek the necessary funding for English and French interpretation during the meetings of the working group.

8. The Committee recommended that the Executive Board adopt the following draft decision:

The Executive Board,

1. Recalling 104 EX/Decision 3.3, dated 26 April 1978, “Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective”,
2. Reaffirming that the Committee on Conventions and Recommendations (CR) has a dual mandate, both tasks being of equal importance,
3. Recalling also 181 EX/Decision 26 and 182 EX/Decision 30, both referring to the issue of the working methods of the Committee on Conventions and Recommendations (CR) regarding the “104 procedure”,
4. Thanks the Member States that submitted valuable contributions, which were included in the reports 182 EX/30 and 184 EX/19 Part I, and thanks also the Secretariat for its report 184 EX/19 Part II, which updates the comparative study of the “104 procedure” with those of the United Nations human rights body;
5. Conscious that more than 30 years have passed since the Executive Board adopted 104 EX/Decision 3.3 and that, in the light of the development and achievements within the United Nations system for the protection and promotion of human rights, it would be

timely to review and improve the effectiveness of the implementation of 104 EX/Decision 3.3 in order to achieve greater efficiency and visibility in UNESCO's action;

6. Decides that the open-ended ad hoc working group established pursuant to 182 EX/Decision 30 to examine ways and means of improving the working methods of the Committee on Conventions and Recommendations (CR), without any financial implications, will work under the following operational modalities:
 - (a) It shall appoint by consensus a Chairperson, who shall be selected from among the members of the Committee on Conventions and Recommendations;
 - (b) It shall have at least two working days before the autumn session of the Executive Board, to evaluate the different proposals included in the written contributions from Member States (182 EX/30 and 184 EX/19 Part I), and those resulting from the debate in the 184th session of the Committee on Conventions and Recommendations, as well as the comparative study of the Secretariat (184 EX/19 Part II), with a view to presenting a comprehensive proposal to its 185th session in this regard;
 - (c) It shall consider, with special attention, all the concerns expressed by members of the Committee regarding the working methods, practices and modalities of the Committee;
 - (d) It will conduct its business under the Rules of Procedure of the Executive Board;
 - (e) The ad hoc working group will meet in conjunction with the next session of the Executive Board.
7. Decides also to grant the Committee on Conventions and Recommendations at its 185th session two additional working days for this purpose, with a view to considering the ad hoc working group's proposals and adopt decisions in due course and requests the Director-General to identify funding therefor.

Item 20 Monitoring of the implementation of UNESCO's standard-setting instruments
(184 EX/20)

9. The representative of the Director-General and Legal Adviser introduced document 184 EX/20 containing a report on the ratification of the three conventions that the CR Committee monitors under its terms of reference and summarizing the obstacles encountered by Member States in ratifying those conventions and the difficulties experienced in implementing the three conventions and the 11 recommendations that are also monitored by the CR Committee.

10. Recalling that the two aspects of the CR Committee's terms of reference should be of equal importance, the members of the Committee stressed that, owing to the excessively synoptic character of document 184 EX/20, they could not properly assess the measures taken by the Secretariat to implement the new procedures adopted by the Executive Board at its 177th session. In that connection, some members considered that the CR Committee must first define its goals and expectations to enable the Secretariat to provide the vital information that the Committee would read to make such an assessment. That notwithstanding, they requested the Secretariat to provide additional information right away on specific steps taken by the Secretariat, in particular to promote the ratification of conventions, and on the resources available to the Secretariat to accomplish that task.

11. By way of additional information, the Education Sector stated, as a preliminary remark, that the Secretariat would duly take into account all comments made by members of the Committee during the current debate in order to provide them with more targeted information in future. It then

stressed that the Secretariat paid particular attention to the monitoring of the implementation of the standard-setting instruments despite the limited human and budgetary resources available on account of the Sector's other priorities. It also stated that inputs had been deliberately synoptic owing to the constraints imposed on the preparation of documents for the current session of the Executive Board which had been limited to a maximum of six pages, while stressing that the Education Sector had posted information on the Internet on the monitoring of those instruments.

12. In regard to the 1960 Convention against Discrimination in Education, the Education Sector noted that, since the last consultation, six new instruments of ratification had been deposited with UNESCO and that ratification was under way in other States. It then gave details on action taken to promote the ratification and implementation of the Convention, such as the preparation, in cooperation with the Office of the United Nations High Commissioner for Human Rights, of a collection of good practices and the holding of meetings of experts, in particular on the right to education. Lastly, the Education Sector stated that a new awareness-raising campaign to promote ratification of the Convention would be launched shortly. The Education Sector then stressed that the formulation of draft guidelines for the preparation of reports on the 1989 Convention on Technical and Vocational Education and the 2001 Revised Recommendation thereon had been deferred on account of the independent study currently being carried out on the impact of those instruments. Consequently, the timetable of work of the CR Committee for 2009-2013 on the monitoring and implementation of UNESCO's standard-setting instruments (Annex II to document 182 EX/31) should be revised.

13. In regard to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the Culture Sector stressed that, despite the generosity of donor countries, the Convention's secretariat had limited means, especially as it also monitored the work of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation and activities relating to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. Lastly, it gave specific details of ongoing training activities, in particular those intended for African countries, and stated that the National Commissions would be included unfailingly in the next consultation. In regard to the 1980 Recommendation concerning the Status of the Artist, the Culture Sector referred to the establishment in 2003 of the World Observatory on the Social Status of the Artist, which grouped Member States' reports on that Recommendation together on the Internet, and stressed the insufficiency of the secretariat's resources in that regard.

14. The Social and Human Sciences Sector noted that the contribution relating to the 1974 Recommendation on the Status of Scientific Researchers was concise because the Secretariat's work would be done mainly during the second half of 2010. It confirmed that specific activities carried out by the Secretariat in that regard would be reported without fail to the Committee at the 185th session of the Board.

15. The representative of the Director-General and Legal Adviser added that in 2005 and 2006, in the context of its work and with a view to strengthening the first aspect of its terms of reference, the CR Committee had decided to monitor the implementation of only three conventions, leaving aside those which were no longer – or were not – subject to a monitoring procedure, either because of their obsolescence or because of their inactive status since the emergence of the Internet and digital publishing. In addition, the Committee had also identified 11 priority recommendations, as the others had been overtaken by the later adoption of a standard-setting instrument dealing with the same subject or by various technological developments, or as the principles contained in the recommendations were considered to be generally accepted and applied.

16. The members of the Committee recommended that the documents prepared by the Secretariat on monitoring the implementation of the standard-setting instruments should be more detailed so that an effective, in-depth examination could be made of the difficulties met in implementing the new legal framework on monitoring the standard-setting instruments which, in

their view, should be given greater visibility. They stressed the importance of the Secretariat's cooperation with the National Commissions in that area and recalled the need to provide Member States with technical assistance, as necessary, including through the field offices. In conclusion, the members of the Committee requested the Director-General to ensure the implementation of the new legal framework and to submit to the Executive Board at its 185th session detailed information on the activities undertaken to promote the ratification of the conventions and the implementation of the recommendations, including on the human and budgetary resources allocated for that purpose.

17. In the light of the foregoing, the Executive Board may wish to adopt a decision along the following lines:

The Executive Board,

1. Recalling 15 C/Resolution 12.2, 23 C/Resolution 29.1, 165 EX/Decision 6.2, 32 C/Resolution 77, 170 EX/Decision 6.2, 171 EX/Decision 27, 174 EX/Decision 21, 175 EX/Decision 28, 176 EX/Decision 33, 177 EX/Decision 35 (I and II), 34 C/Resolution 87, 180 EX/Decision 31, 181 EX/Decision 27 and document 182 EX/31 relating to the first aspect of the terms of reference of the Committee on Conventions and Recommendations (CR), which concerns the implementation of UNESCO's standard-setting instruments,
2. Having examined document 184 EX/20 and the report of the Committee on Conventions and Recommendations thereon (184 EX/39),
3. Invites Member States once again to fulfil their legal obligations under Article VIII of the Constitution of UNESCO regarding periodic reports on the action taken on conventions and recommendations;
4. Takes note of the revised timetable of work of the CR Committee for 2009-2013 on the monitoring and implementation of UNESCO's standard-setting instruments, contained in the annex to this decision;
5. Requests the Director-General to ensure the implementation of this new legal framework by the programme sectors and the UNESCO Institute of Statistics (UIS), which have responsibility for the conventions and recommendations monitored by the Committee on Conventions and Recommendations;
6. Requests the Director-General to submit detailed information on the activities undertaken to promote the ratification of the conventions and the implementation of the recommendations, including on the human and budgetary resources allocated for that purpose, with a view to its consideration by the CR Committee at the 185th session of the Executive Board;
7. Decides to continue consideration of the matter at its 185th session.

Annex

Revised timetable of work of the CR Committee for 2009-2013

UNESCO conventions and recommendations for which no specific institutional mechanism is provided and for whose monitoring the CR Committee is responsible	2009		2010-2011					2012-2013				
	182 EX (2009)	35 C (2009)	184 EX (2010)	185 EX (2010)	186 EX (2011)	187 EX (2011)	36 C (2011)	189 EX (2012)	190 EX (2012)	191 EX (2013)	192 EX (2013)	37 C (2013)
1960 Convention against Discrimination in Education (ED)				EG							ER	PR
1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (CLT)			EG			ER	PR			EG		
1989 Convention on Technical and Vocational Education (ED)			EG*			ER	PR		EG			
1960 Recommendation against Discrimination in Education (ED)				(with C.1960)							(with C.1960)	(with C.1960)
1966 Recommendation concerning the Status of Teachers (ED)				ER (CEART)				ER (CEART)				
1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (ED)	ER	PR									ER	PR
1974 Recommendation on the Status of Scientific Researchers (SHS & SC)						ER	PR					
1976 Recommendation on the Development of Adult Education (ED)						ER	PR					
1978 Revised Recommendation concerning the International Standardization of Educational Statistics (UIS)	<i>Reassessment of the International Standard Classification of Education for submission to the General Conference at its 36th session</i>											
1980 Recommendation concerning the Status of the Artist (CLT)						ER	PR					
1993 Recommendation on the Recognition of Studies and Qualifications in Higher Education (ED)					ER		PR					
1997 Recommendation concerning the Status of Higher-Education Teaching Personnel (ED)				(with R. 1966)				(with R. 1966)				
2001 Revised Recommendation concerning Technical and Vocational Education (ED)			(with C.1989)			(with C.1989)	(with C.1989)		(with C.1989)			
2003 Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (CI)					ER		PR					

EG: Examination of guidelines by the Executive Board/ER: Examination of reports by the Executive Board/PR: Presentation of reports at the General Conference.

* Consideration deferred to a later session.

Item 22 Implementation of the 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (184 EX/22)

18. The Chair introduced the item, and the Assistant Director-General for Education ad interim, representative of the Director-General, presented the document. He explained that by 182 EX/Decision 35, the Executive Board's Committee on Conventions and Recommendations had decided to continue, at its 184th session, consideration of the implementation of the 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms, with particular focus on obstacles and continuing challenges, and suggestions for future action by some Member States.

19. The presentation was followed by an interactive dialogue. Several Member States took the floor, emphasising the fundamental importance of the right to education in promoting human rights education and that human rights education is an integral part of the right to education. The difficulty for children in conflict situations to attend school was raised. The disparities in the current education system needed to be addressed. Some countries argued the difficulties related to the integration of human rights education as a separate subject, as stated by one national report. It was important to put human rights education in the context of teaching and learning objectives and this needs to be carried out stage by stage, through training. A number of countries emphasized the need to enlarge partnerships covering different regions and in particular with the existing regional networks and initiatives supporting international education, peace education and human rights education. The Secretariat was requested to expand its efforts in supporting the existing networks in different regions. The importance of education for parents was underlined as the family was the place where proper education related to values took place. Several members emphasized the need to take into account specificities related to cultural and religious contexts while the values of human rights were universal. One country mentioned that a core curriculum at the international level covering peace and conflict resolution, sustainable use of available natural resources needed to be developed. Legal and ethical norms of human rights should be integrated in school textbooks. Finally, the CR Committee discussed the role of research and higher education to be strengthened. Universities are the forum of new ideas, and their potential role as an interface with society should be further explored with a view to strengthening awareness-raising on human rights-related issues.

20. Taking note of those remarks, the representative of the Director-General responded to queries and furnished clarifications. In his responses, he underlined the importance of full respect for the right to education. Every child must be brought to school before benefiting from human rights education. The whole society and diverse stakeholders should also be mobilized to help provide human rights education to children and parents. He also took note of the need of taking into account specificities of different regions and societies. With respect to the requested development of partnerships not only at the global level, but also at the regional level, the Sector would undertake research on the existing networks and advance reflection on how to bring them together. The Education Sector pursued within document 35 C/5 its work on human rights education and education for peace, democracy and freedoms. The richness of the inputs submitted by country reports through the Fourth Consultation guided the work of the Secretariat for the current biennium. The Secretariat would keep Member States informed of its progress and would submit a progress report.

21. In the light of the foregoing, the Executive Board may wish to adopt the following draft decision:

The Executive Board,

1. Recalling 182 EX/Decision 35 and the report of the Committee on Conventions and Recommendations thereon (184 EX/39),

2. Takes note of document 184 EX/22 and of the observations made during the discussions of the CR Committee at the present session.

Item 23 Report of the tenth meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (184 EX/23)

22. The Chair of the CR Committee introduced this item and highlighted the mandate of the Joint Expert Group. Upon the invitation by the Chairperson, the Assistant Director-General for Education ad interim, representative of the Director-General, presented the report and highlighted its main elements.

23. This was followed by a discussion, in which several Member States took part. Interventions covered issues regarding the Joint Expert Group itself and the issue of languages in education. The debate demonstrated the high interest of Member States in the activities of the Joint Expert Group. Expressing their interest in the future work of the Joint Expert Group, the members of the CR Committee considered that a medium-term work programme (timetable of activities) on issues to be dealt with by the Joint Expert Group in the next two years should be developed and presented to the sessions of the Executive Board. They also pointed out the difficulty of the present situation regarding the absence of current CR Committee members and, in particular, the fact that the two previous representatives of the Committee within the Joint Expert Group were no longer members of the Committee and therefore not present for the current discussion. Nevertheless, they rejected the proposal made by the Joint Expert Group in order to avoid such a situation, to select one member of the CR Committee who had two years more to serve on the Executive Board, arguing that they could not decide in advance who would remain a member of the CR Committee for four years. The Chair informed the Committee that consultations with the Chair of the Executive Board were taking place with a view to designating the new CR Committee members. The issue regarding the nature of the Joint Expert Group (a mixed body, the representatives of the CESCR are experts, whereas the members of the CR Committee are State representatives) was also noted. That could be seen as a difficulty but it was also an advantage and members strongly encouraged the Joint Expert Group to pursue its work on various dimensions of the right to education.

24. The members commended the work of the Joint Expert Group and, notably, the outcomes of its 10th Meeting. It was recognized that the issue of languages in education is very sensitive and constitutes a major challenge. It was also pointed out that promoting multilingual education could be very expensive in some countries. As regards paragraph 2 of the document, it was mentioned that there is no legal obligation for all Member States to respect the principle of equality of opportunity and not to discriminate on the basis of language in the public education systems. However, it was emphasized that in reality the right to education is widely recognized, especially in light of the efforts to reach the goals of education for all. As regards paragraph 4, they requested further information on the UNESCO preliminary study (181 EX/14) of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages. Moreover, regarding paragraph 9 some members expressed their wish to obtain further information on the three basic principles set out in the UNESCO Education Position Paper on Education in a multilingual world (2003). Finally, it was observed that the Roma population is not always considered as a minority group and a question on the definition of minority and UNESCO's position was raised.

25. Taking note of these remarks, the representative of the Director-General, responded to queries and furnished clarifications as to the preparation of the suggested medium-term plan and on the substance. Recalling that language in education is a sensitive issue in some countries, he underlined the need to work closely with governments in line with their national policies taking into account the local contexts and to strengthen partnership with all stakeholders, especially civil society and NGOs. He also expressed his appreciation regarding the strong support of the Joint Expert Group to UNESCO's mandate in promoting the right to education, including language

issues. It is important to strengthen UNESCO's work on the legal framework of the right to education.

26. As a result of the debate, the draft decision proposed on paragraph 15 of the document was amended as follows:

The Executive Board,

1. Recalling 162 EX/Decision 5.4, 171 EX/Decision 27, 172 EX/Decision 26, 175 EX/Decision 29, 177 EX/Decision 37, 179 EX/Decision 24 and 181 EX/Decision 28,
2. Having examined document 184 EX/23,
3. Expresses its appreciation of the work of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education;
4. Recognizes the key importance of the theme which the Group addressed at its tenth meeting;
5. Requests the Director-General to consider the suggestions and recommendations made by the Joint Expert Group in document 184 EX/23 for follow-up action, taking into account the comments made during the discussions of the Committee on Conventions and Recommendations at the present session;
6. Invites the Joint Expert Group to continue its consultations related to the examination of key issues within its broad mandate regarding the monitoring of the right to education in all its dimensions, to submit a medium-term work programme and to report to it at its 186th session.

Item 25 Consideration of the draft guidelines for the preparation of reports by Member States on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (184 EX/25)

27. During the discussion, the members of the CR Committee commended the high-quality and comprehensiveness of the Secretariat's contribution, but requested that the draft guidelines be somewhat more concise and uniform. As a result, the members of the Committee recommended, in particular, the following changes:

- more questions to countries which import cultural property;
- a distinction between the information falling directly under the UNESCO Convention and that associated with other instruments, in particular the UNIDROIT Convention;
- a more precise request for details concerning the volume of the art market on States' territories;
- greater highlighting of issues related to awareness-raising and education;
- acknowledgement of European Union regulations concerning the circulation of cultural property.

28. The Secretariat pointed out that the assessment of the 1970 Convention, conducted in 2006 and 2007, was based on a much less comprehensive questionnaire answered by only 31 States Parties and non-States Parties. It evoked the working method followed to draft document 184 EX/25 which had been tested at a training workshop, where participating countries had been

evaluated by virtue of a detailed questionnaire, drawn up by UNESCO with the support of a cultural heritage legal protection specialist. The assessment carried out among the States concerned took into account all aspects related to the fight against trafficking and restitution matters and not only issues falling directly under the articles of the UNESCO Convention.

29. In the light of the above, the Executive Board may wish to adopt a draft decision along the following lines:

The Executive Board,

1. Bearing in mind Member States' obligations under Article VIII of UNESCO's Constitution and Article 17 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution,
2. Further recalling Part I and Part II of 177 EX/Decision 35 adopting respectively a specific multi-stage procedure for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided and framework guidelines,
3. Having examined document 184 EX/25 and the report of the Committee on Conventions and Recommendations thereon (184 EX/39),
4. Approves the guidelines drawn up for the preparation of reports by Member States on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) as amended and contained in the annex of this decision;
5. Requests the Director-General to request Member States to submit to UNESCO, within a period of six months, reports on the implementation of the 1970 Convention;
6. Further requests the Director-General to submit, at its 187th session, a summary of the reports received from Member States on the measures taken in regard to the implementation of the 1970 Convention, with a view to the submission of the summary, together with the Board's comments, to the General Conference at its 36th session and to establish and provide an access to a database on the selected information obtained.

Annex

Draft guidelines for the preparation of reports by Member States on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

As far as practicable, it is recommended that Member States follow all of the points contained in this draft. In its contribution, however, the State may disregard any aspects on which no information is available. Lastly, even though some points are framed as questions, the document must be regarded more as a guide than as a questionnaire.

I. Information on the implementation of the UNESCO Convention of 1970 (with reference to its provisions)

1. Ratification of the Convention

- (a) Has this Convention already been ratified?

- (b) If not, please indicate, where applicable:
- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term);
 - obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them ;
 - the extent to which UNESCO can assist in completing the process?

2. Implementation in the national legal system and in the organization of services

- (a) Give the references of the principal national regulations adopted in order to implement the 1970 Convention?
- (b) A definition of “cultural property” agreeing with the definition proposed by the 1970 Convention is important in order to increase the effectiveness of international cooperation. State what definition is used by the national laws of the country concerned.
- (c) Have specialized units been established in order to prevent and combat trafficking and ensure international cooperation for the protection of cultural heritage? Within the Heritage Department? In other government departments (police, customs)?
- (d) Describe briefly the administrative coordination of the activities of these specialized units, especially with the police and customs authorities.
- (e) Are working meetings held to enable police officers, customs officials and ministerial representatives to meet and coordinate their activities?

3. Inventories and identification

- (a) State briefly the extent to which inventories provide for the risks of misappropriation and theft.
- (b) Specify the degree of precision, at the national level, of the definition of “cultural property” covered by international conventions (see above 1.2(b)). State whether “national treasures” are identified in an official, tentative or exhaustive list.
- (c) To what extent is the Object ID standard used? Is the standard adapted to the State’s needs?
- (d) Are there systems to combat theft and to train museum staff and have specific measures been adopted for libraries, archival and manuscript repositories, and any specialized units established to monitor them?

4. Archaeological excavations

- (a) Summarize the basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force in the country.
- (b) Is there a recurrent problem of illegal excavations? If so, what are the reasons and when did it begin? What steps have been taken to combat this scourge?

5. Monitoring of the export and import of cultural property

- (a) Give an estimate of the scale of the illicit export or import of cultural property. Are up-to-date statistics compiled on the theft of cultural property?

- (b) Is the illicit export of cultural property a recurring problem? If so, for which reasons (lack of financial and human resources, shortcomings in the legal supervision framework, etc.)?
- (c) What are the main rules (administrative and legal) for monitoring the export and import of cultural property (existence of an export certificate, public information about the rules in force)? What categories of cultural property are covered by the rules?
- (d) Do the rules provide for the restitution of illicitly imported cultural property?
- (e) What are the main obstacles encountered in securing the restitution of illicitly exported cultural property? What type of obstacles are they (administrative, legal or political) and why do they arise (legal loopholes, unwillingness by importing countries, lack of international cooperation, etc.)?
- (f) If the country has succeeded in securing the restitution of a stolen cultural object, describe the circumstances and state whether that involved legal proceedings, arbitration or alternative dispute resolution.

6. System for trade-in, acquisition, ownership and transfer of cultural property

- (a) Give a brief description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).
- (b) What are the main rules governing trade in cultural goods? Are control measures in place for such trade (maintenance of a police register), in particular through the Internet (for example, reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)?
- (c) Do measures exist to control the acquisition of cultural property (for example, mechanisms to prevent museums and similar institutions from acquiring cultural property exported illegally from another State)?
- (d) Specify the existing legal system concerning ownership of cultural property:
 - is the principle of inalienability applied to cultural items in national collections and objects originating in heritage sites ?
 - what is the status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations ?
- (e) Are there special rules on the transfer of title deeds in respect of cultural property? If so, please summarize their content.

7. Bilateral agreements

- (a) List the bilateral agreements concluded with other countries on the import, export and return of cultural property and comment briefly on their results.
- (b) What conditions are set by the importing country with regard to the admissibility of requests for restitution from a country of origin?
- (c) Apart from these agreements, is there administrative aid or any other type of cooperation with neighbouring countries, particularly in respect of police and customs services?

II. Code of ethics, awareness raising and education

Ethical standards

- (a) Are the UNESCO International Code of Ethics for Dealers in Cultural Property and that of ICOM for museums known to the professionals concerned (in particular, curators, antique dealers, merchants and collectors)? How is their observance checked?

Awareness raising and education

- (b) Are the “One hundred missing objects” series and the ICOM Red Lists disseminated and read?
- (c) Briefly describe activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export. How far can UNESCO contribute to these activities?

III. Cooperation with other international and regional agencies

Police

- (a) What is the state of national cooperation with INTERPOL? What specialized police services can heritage officials call on for enquiries, legal proceedings and punitive measures?
- (b) If a cultural object is stolen, is the INTERPOL database on stolen objects checked? Is information on the persons implicated in the theft of cultural property transmitted to INTERPOL?
- (c) Do members of police services follow a specific training programme?
- (d) Do criminal law provisions allow for the punishment of fraud and theft related to cultural property? Are judges specialized in this field?
- (e) Does cooperation exist with the United Nations Office on Drugs and Crime (UNODC)?

Customs

- (f) What is the status of cooperation with the World Customs Organization and which specialized customs services can assist heritage officials in preventing the illicit export of cultural property?
- (g) Do members of the customs administration follow a specific training programme?
- (h) Is the UNESCO-WCO Model Export Certificate for Cultural Objects used?

European Union

Have particular measures been adopted to apply the Council of the European Communities Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.

IV. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

(a) Has this Convention been ratified, in addition to that of 1970?

(b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term) ;
- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
- the extent to which UNESCO can assist in completing the process.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Describe the extent to which the State concerned is following the work of the UNESCO Intergovernmental Committee (observer, member, State concerned by a case under discussion etc.).

3. UNESCO Database of National Cultural Heritage Laws

Indicate action taken to organize the contribution to the UNESCO Database of National Cultural Heritage Laws and to check whether it contains all historical and existing laws and regulations, including successive amendments.