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UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

EXPERT MEETING ON THE PROTECTION AND PROMOTION OF MUSEUMS AND COLLECTIONS

Rio de Janeiro, Brazil
11 - 14 July 2012

UNESCO CONCEPT PAPER

Follow-up on 36 C/Resolution 46 - Protection and promotion of museums and collections (background paper)

I. INTRODUCTION

1. 36 C/Resolution 46 requested “the Director-General to conduct an **assessment of the range of possible modalities for the protection and promotion of museums and collections in times of war and in times of peace** [emphasis added – UNESCO Secretariat] on the basis of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and to submit that assessment to the Executive Board for examination at its 190th session”.

2. It also invites the Director-General “to convene a meeting of experts, in consultation with the International Council of Museums (ICOM), to assist her in the preparation of the above-mentioned assessment, it being understood that such assessment should include exploring any concepts related to this topic” and “welcomes the offer from the Government of Brazil to host and finance the above-mentioned meeting”.

II. PROTECTION AND PROMOTION OF MUSEUMS AND COLLECTIONS IN TIMES OF WAR AND IN TIMES OF PEACE ON THE BASIS OF THE 1954 HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT (“THE HAGUE CONVENTION”) AND THE 1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY (“THE 1970 CONVENTION”)

3. Article 1 of the Hague Convention covers, among other things, movable cultural property of great importance to the cultural heritage of every people, irrespective of origin or ownership, such as works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, scientific collections, important collections of books or archives as well as museums. Thus, both museums and museum collections are protected in peacetime and wartime by the Hague Convention. As the definition of cultural property contained in Article 1 of the Hague Convention is used by the 1954 and 1999 Protocols, those agreements protect museums and museum collections as well.

4. In accordance with its subject-matter and scope, Article 1 of the 1970 Convention provides for the protection of movable cultural property. Thus, it explicitly covers museum to the extent that the property included therein:

- has been specially designated by a State Party as being of importance for archaeology, prehistory, history, literature, art or science; and,
- belongs to the following categories:
 - (a) rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;
 - (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance;
 - (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries ;
 - (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
 - (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
 - (f) objects of ethnological interest;
 - (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs ;
 - (iv) original artistic assemblages and montages in any material;

- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections ;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

III. THE IMPORTANCE OF PEACETIME SAFEGUARDING MEASURES UNDER THE 1954 AND 1970 CONVENTIONS AS WELL AS UNDER THE SECOND PROTOCOL TO THE HAGUE CONVENTION AND THE OBJECT-ID FOR THE PROTECTION OF MUSEUMS AND MUSEUM COLLECTIONS

5. Article 3 of the Hague Convention provides for the obligation to take appropriate peacetime measures against the foreseeable effects of armed conflict. This Article is complemented by Article 5 of the Second Protocol which sets forth preparatory measures including the preparation of inventories, the planning of emergency measures for protection against fire or structure collapse, and the preparation for the removal of movable cultural property or the provision for adequate *in situ* protection of cultural property. Both museums and museum collections profit from the implementation of such measures and, in particular, from the establishment and update of inventories of cultural property.

6. Article 5 of the 1970 Convention requires the establishment of national services dedicated to the protection of cultural heritage through the promotion and development of museums and museums collections. Paragraphs (b) and (c) of this Article include explicit provisions dedicated to the establishment and update of lists of important public and private cultural property, the export of which, would constitute an appreciable impoverishment of the national cultural heritage, such lists being based on inventories of protected property. States Parties are requested to promote the development or the establishment of scientific or technical institutions such as museums to ensure the preservation and presentation of cultural property.

7. In application of Article 5(b) of the 1970 Convention and to assist its States Parties as well as other UNESCO Member States, UNESCO, together with the Getty Information Institute, developed the Object ID, an international standard for describing cultural objects. The Object ID consist of a 4-step process of documentation: (1) photographing the object, (2) answering specific questions about the object such as, but not limited to, whether it has distinguishing features, what materials it is made out of etc. (3) writing a short description of the object, and (4) keeping the documented information in a secure place. The Object ID helps combat the illegal appropriation of art objects by facilitating documentation of cultural property, by contributing to the search of provenance, by defining their clear and lawful origin, and by bringing together organizations around the world that can encourage its implementation.

8. As for the application of ethical principles for the benefit of curators, museums and other stakeholders, in application of Article 5(e) of the 1970 Convention, the intergovernmental Committee for Promoting the Return of Cultural Property to its Countries

of Origin or its Restitution in case of Illicit Appropriation adopted at its tenth session in January 1999, the International Code of Ethics for Dealers in Cultural Property. This Code was subsequently endorsed by the thirtieth session of the General Conference of UNESCO in November 1999. UNESCO widely encouraged the international community and, in particular, the art market to espouse the Code. Through this Code, members who trade in cultural property recognize the key role that trade plays in the dissemination of culture and in its distribution to museums (and private collectors) of foreign cultural property for the education and inspiration of all people. Hence, they acknowledge the world wide concern over the traffic in stolen, illegally alienated, clandestinely excavated and illegally exported cultural property and accept as binding, the UNESCO principles of professional practice intended to distinguish cultural property being illicitly traded from that in licit trade, seeking in this way, to eliminate the former from their professional activities. It is also worth mentioning the ICOM Code of Ethics for Museums, adopted in 1986 and revised in 2004.

9. Finally, Article 10 of the Convention contributes indirectly to the outstanding role of museums and the protection of their collections by obliging antique dealers, subject to penal or administrative sanctions, to maintain **a register** recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold as well as to inform the purchaser of the cultural property of the export prohibition to which such property may be subject.

IV. OBLIGATION OF MUSEUMS UNDER THE 1970 AND 1995 CONVENTIONS RELATED TO SEARCH OF PROVENANCE AND TO STOLEN OR ILLEGALLY EXPORTED CULTURAL PROPERTY

10. Under Article 7 (a) and (b) of the 1970 Convention, State Parties are required to take the necessary measures **to prevent museums** and similar institutions within their territory from acquiring cultural property originating in another State Party and illegally exported after entry into force of the Convention for both States Parties. They are also requested, whenever possible, to inform a State of origin Party to the Convention of an offer of such cultural property illegally removed from that State after the entry into force of the Convention for both States concerned. Furthermore, they are obliged **to prohibit the import of cultural property stolen, among other things, from a museum** in another State Party, provided that such property is documented as appertaining to the inventory of that museum.

11. Moreover, the 1995 UNIDROIT Convention contains in Article 4 explicit and detailed provisions regarding search of provenance and the exercise of due diligence when acquiring an object, thus enhancing the level of guarantee and protection provided to museums and their collections against illicit traffic, illegal export and unlawful appropriation.

V. COMPLEMENTARY ROLE OF THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS (“THE UNIDROIT CONVENTION”) IN RETURN AND RESTITUTION OF CULTURAL PROPERTY, INCLUDING THOSE FROM MUSEUMS

12. The UNIDROIT Convention attempts to deal with legal obstacles present in the return and restitution of cultural objects and to enhance the role of museums and cultural institutions. It complements the 1970 Convention by adding a stronger litigation framework and expanding standing for wronged parties. Both Conventions fight against the illicit traffic in cultural property, but while the 1970 Convention includes both the prevention and restitution of cultural property, the UNIDROIT Convention focuses more on the latter.

13. The main difference with the restitution phase is that the 1970 Convention operates at an interstate level while the UNIDROIT Convention contains private law provisions and allows State Parties, physical persons, and legal persons to seek restitution through courts or other competent authorities. The 1970 Convention does not contain any specific provision on statutes of limitation but the UNIDROIT Convention sets clear time limits and this serves to strike a balance between the needs of legal predictability and facilitating recovery by the original owner (case of theft) or interested state (case of illicit export).

VI. ROLE OF OTHER UNESCO’S STANDARD-SETTING INSTRUMENTS FOR THE PROTECTION OF MUSEUMS AND MUSEUM COLLECTIONS

14. The 1954 Protocol contributes to the protection of museum collections by prohibiting its States Parties which are Occupying Powers, from exporting movable cultural property from occupied territory. Other States Parties are required to take into custody cultural property imported into their territory either directly or indirectly from any occupied territory. They are also required to return, at the close of hostilities, to the territory previously occupied, cultural property which was originally in its territory, if such property has been exported from occupied territory. Finally, cultural property may not be retained as war reparations. This provision is of fundamental importance with regard to museum collections taken into custody by a belligerent power which wishes to exercise its right to war reparations.

15. The Second Protocol contributes to the protection of museum collections by prohibiting and preventing any illicit export in occupied territories, and other removal or transfer of ownership of cultural property (Article 9). It also contributes indirectly to the protection of museums by specifying obligations related to respect for cultural property (Article 6), precautions in attack (Article 7) and precautions against the effects of hostilities (Article 8). Finally, it contributes to the protection of museums and museum collections by providing for penal sanctions for serious (Article 15) and other violations (Article 21).

16. The 2001 Convention on the Protection of the Underwater Cultural Heritage contributes to the protection and preservation of museum collection by prohibiting commercial exploitation of this heritage (Article 2.7 of the Convention). Furthermore, Article 2.6 of this Convention states that recovered underwater cultural heritage shall be deposited, conserved and managed in a manner that ensures its long-term preservation. Detailed

regulations on the preservation and storage, as well as exhibition of underwater heritage are contained in the Rules concerning activities directed at underwater cultural heritage annexed to the Convention (e. g. Rules 10, 33, 34 and 35).

17. The 2003 Convention for the Safeguarding of Intangible Cultural Heritage and its operational directives may imply the role of museums in the safeguarding of this particular cultural heritage. Objects associated with expressions of intangible cultural heritage are included in the definition given in the Convention (Article 2). Museums may also participate in the conduct of inventories, in the implementation of other measures for safeguarding, as well as activities aiming at improving education, awareness-raising and capacity-building. Among the programmes inscribed in the Register of Best Safeguarding Practices, two are implemented by a museum, and one concerns the creation of a museum.

VII. MANDATE AND ROLE OF THE INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION (“THE COMMITTEE”)

18. In addition to cases where the 1970 Convention, the 1995 Convention or any other bilateral or multilateral agreement are applicable, there are cases where no multilateral or bilateral agreement is applicable. In those cases, UNESCO Member States which have lost certain cultural objects of fundamental significance, either from a museum or a cultural institution or from a private collection and who are calling for their restitution or return (on their behalf or on behalf of a private person), may call on the Committee for aid. Set up in 1978 by the General Conference, it provides a negotiating forum framework for discussion and negotiation, but its recommendations concerning interstate disputes are not legally binding.

19. Essentially, this Committee seeks ways and means of facilitating bilateral negotiations, promoting multilateral and bilateral cooperation with a view to the restitution or return of cultural property as well as fostering a public information campaign on the issue, and promoting exchanges of cultural property.

20. It is also regrettable and thus worth recalling that very often it is forgotten that this thirty-year old intergovernmental organ can also play a fundamental role in the protection and promotion of museums and their collections. In virtue of its Statutes, especially Article 4, paragraphs 3 and 6, the UNESCO Committee is responsible for encouraging the researches and studies for the establishment of programmes “for the **constitution of representative collections** in countries whose cultural heritage has been dispersed”. Its goal is also to encourage “the **establishment or reinforcement of museums**” and similar institutions to enhance the conservation of cultural property and the training of their specialized staff.

21. Additionally, the Committee may be of particular help in case of mediation and conciliation with regard to disputes concerning museum collections because of the sensibility of such disputes and particular qualification of mediators and conciliators. In this regard, specific Rules of Procedure were drafted and adopted in 2010.

22. Another possible modality for the protection and promotion of museums and collections is the use of the Fund of the Intergovernmental Committee. This operational tool was created in compliance with Recommendation No. 6 (adopted in 1999 by the tenth session of the Committee) to aim to support Member States in their efforts to pursue the return or restitution of cultural property and effectively fight illicit traffic in cultural property, particularly with regard to: the verification of cultural objects by experts, transportation, insurance costs, **setting up of facilities to exhibit them in satisfactory conditions and training of museum professionals in the originating countries of cultural objects.**

23. Chapter IV (a) and (b) of the Rules for the functioning of the Fund states that, **concerning the settlement of spaces for exhibitions, transport and insurance of objects, creation and reinforcement of museums** for the conservation of cultural objects, particularly in the developing countries, as well as sensitization campaigns, development of capacities and restitution of cultural objects, States can make use of the Fund.

24. In March 2001, the Director General of UNESCO launched an appeal to contribute to the Fund in order to facilitate the effective restitution of cultural property to its State of origin or its owner and to better promote and protect museums and collections.

Conclusions

25. It is respectfully submitted by the Secretariat that museums and museum collections are protected under the 1954 Hague Convention and its two Protocols, the 1970 and the 1995 UNIDROIT Conventions. The role of museums can also be promoted through the framework of the 2003 Convention. It is also recalled that several operational tools, in particular the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation already exist and were created to contribute to the development of museums and grant better protection, visibility of and access to their collections.

26. Nevertheless, members of the international heritage community acknowledge certain gaps in implementing these standard-setting instruments. As a consequence, the protection, and promotion, of museums and museum collection requires a wide ratification of the existing international standard-setting instruments. It is also necessary to make a significant effort to fully implement them at the national level through, in particular, adoption and update of the relevant national legislation¹, enforcement measures, information sessions and capacity- building training, targeting specially training on inventories, security of museums premises, training of relevant staff and, elaboration and adoption of codes of professional ethics. It is also necessary to develop and promote the use of practical tools that help protecting museum collections. In the area of the promotion of museums and museum collections, it is necessary to support all initiatives in this regard, particularly in countries where museums and museum activities may be threatened.

¹ In this regard, UNESCO and UNIDROIT drafted jointly a draft model legislation in order to help States to define their ownership of cultural property, in particular that of undiscovered archaeological objects.