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Cultural Organization



Convention for the fight
against the illicit trafficking
of cultural property

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**Fourth Session of the Subsidiary Committee of the Meeting of States Parties to the
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and
Transfer of Ownership of Cultural Property
(UNESCO, Paris, 1970)**

Fourth Session
Paris, UNESCO Headquarters, Room II
26-28 September 2016

Provisional agenda item 12: Strengthening preventive measures to protect
documentary heritage

Following decision 3 SC 7 adopted at the third session of the Subsidiary Committee, the purpose of this document is to strengthen preventive measures to protect documentary heritage. It includes a reference document on combatting the trafficking of documentary heritage prepared by the Secretariat of the Interior of Mexico (SEGOB).

Draft Decision: paragraph 8

I. BACKGROUND

1. During the Third session of the Subsidiary Committee, Mexico, supported by Poland, Ecuador and Japan, proposed to include the illicit traffic of documentary heritage as one of the priority topics during the fourth session of the Subsidiary Committee. A study was prepared by the National Archives of Mexico to inform this agenda item.
2. Consequently, the Subsidiary Committee, by its Decision 3 SC 7, adopted at its third ordinary session, decided that illicit trafficking in documentary heritage be included on the agenda of the fourth ordinary session.
3. To this end, the Secretariat of the Interior (SEGOB) and the National Archives of Mexico prepared a reference document (see Annex I) on combatting the trafficking of documentary heritage to guide discussions during the fourth ordinary session of the Subsidiary Committee.
4. The reference document presents an analysis of existing measures and instruments to safeguard documentary heritage, and sets forth a number of recommendations to increase coordination between States Parties¹.
5. The Subsidiary Committee Informal Reflection Group (IRG), established at its last session, also examined the illicit trafficking of documentary heritage during its second meeting at UNESCO Headquarters in Paris, on 4 July 2016, when Mexico made a presentation on the topic.
6. In addition to this study presented by Mexico, the Secretariat wishes to recall the work of the Memory of the World Programme, established in 1992 by UNESCO, in response to the poor state of preservation of, and access to, documentary heritage collections. As a result, the Memory of the World Register was founded in 1995 and lists documentary heritage which has been recommended by the Programme's International Advisory Committee, and endorsed by the Director-General of UNESCO, as corresponding to the selection criteria regarding world significance and outstanding universal value.
7. The Secretariat proposes the following draft decision, based partly on elements taken from recommendations issued by the Latin American Association of Archives (ALA), for the Subsidiary Committee to consider.
8. The Subsidiary Committee of the Meeting of the State Parties may wish to adopt the following decision:

II. DRAFT DECISION

Draft Decision: 4 SC/12

The Subsidiary Committee,

¹ Recommendations and proposals outlined were identified during the first Regional Seminar on Trafficking of Documentary Heritage in Ibero-America, September 2015, in Bogota Colombia, organized by the Government of Colombia, the Latin American Association of Archives (ALA) and UNESCO

1. Having examined document C70/16/4.SC/12 and the study presented by Mexico on behalf of the SOGOB and the National Archives of Mexico;
2. Thanks Mexico for the preparation and completeness of the reference document on documentary heritage;
3. Requests States Parties to enable greater access to information on stolen documents for international organizations, such as INTERPOL², to carry out investigations, and to UNESCO, to develop better counter measures to reduce instances of trafficking of documentary heritage;
4. Encourages States Parties to raise awareness, promote research and develop regulation on the issue and keep the Secretariat informed of all initiatives in this regard³;
5. Also encourages States Parties to apply existing referencing tools and useful instruments against illicit trafficking of cultural property to safeguard documentary heritage⁴;
6. Also requests the Secretariat to urge auction houses to apply the same due diligence considerations to documentary heritage as they do to cultural property and to inform relevant authorities of any suspicious activities⁵;
7. Invites the Secretariat to strengthen collaboration and synergies with the Memory of the World Programme to fight against illicit trafficking of documentary heritage, subject to available financial and human resources, in particular to explore non-invasive identification mechanisms of documentary heritage, develop programmes to making facsimile versions of historical documents available to everyone, and prepare reference guides to support customs and police authorities to identify trafficked documentary heritage⁶;
8. Further requests the Secretariat to hold a roundtable meeting on the topic, inviting experts and key international partners' representatives (ICOM, INTERPOL...), as well as from relevant library and archives associations (ICA, ILA...), and to present its outcomes at the next session of the Subsidiary Committee;
9. In this regard, also invites States Parties to provide additional financial and human support to the Secretariat.

² ALA proposal (b) in the Reference Document

³ ALA proposal (c), (d) in the Reference Document

⁴ ALA proposal (f) in the Reference Document

⁵ ALA proposal (g) in the Reference Document

⁶ ALA proposal (h), (i), (k) in the Reference Document



SEGOB

Secretariat of the Interior

Reference document

Combating the trafficking of documentary heritage

I. Introduction

Documentary heritage makes up a significant part of the cultural heritage that forms the collective memory of the world. Its contribution to culture is invaluable because it reflects the diversity, identity and languages of our peoples, and helps chart the evolution of thought, and form the legacy of our common history.

UNESCO, like other international organizations, has recognized the significance of documentary heritage through various instruments, programmes and declarations, with which it has sought to raise awareness on its value and support its safeguarding. In addition to the adoption of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for its Execution and the adoption of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the Organization established, in 1992, the Memory of the World Programme, in order to attract international attention to the vulnerability of documentary heritage and encourage its protection and accessibility.

The risk of deterioration to or loss of documentary heritage is high due to the nature and composition of the objects that comprise it – ranging from papyrus scrolls and clay tablets to film, sound recordings and digital files – which means that they can be affected by many natural or human-induced disasters, or simply by their gradual disintegration. Recommendations and guidelines adopted by the Organization have been successful in helping to reduce these risks.

Today, one of the main threats to documentary heritage is the illicit transfer of ownership. The malicious acts by individuals or groups who seek to traffic documentary heritage have become a serious concern for the institutions responsible for its safekeeping. Some of the challenges related to this crime include the ease with which documents can be removed from archives, the failure to identify, catalogue and preserve documents and the administrative obstacles that prevent their return to their place of origin.

This phenomenon however, has not been studied in detail despite UNESCO developing guidelines to improve the preservation of, and access to documentary heritage (through the Memory of the World Programme) as well as a general framework for the protection of cultural property (through the 1954 and 1970 Conventions), because measures aimed specifically at combating the trafficking of this precious heritage are insufficient.

In this regard, a comprehensive analysis of the subject is pertinent, and joint international efforts to renew existing individual mechanisms and practices for the protection of documentary heritage is desirable, although they do not at present complement each other. The specificities of the trafficking of documentary heritage must be analysed in detail in order to tackle the phenomenon more effectively worldwide.

Latin American Association of Archives (ALA)

In response to these concerns, the first Regional Seminar on Trafficking of Documentary Heritage in Ibero-America was held in September 2015, in Bogota, Colombia, organized by the Colombian Government, the Latin American Association of Archives (ALA)¹ and UNESCO.

During the seminar, 22 members of ALA² identified current mechanisms used to combat trafficking of documentary heritage and discussed the difficulties and shortcomings in order to improve the safeguarding of this heritage. They concluded that improved coordination between governments and collective efforts to formulate public policies were essential to combating this crime.

Most of the ideas, recommendations and proposals outlined in this document result from the seminar in Bogota.

What is documentary heritage?

According to the Memory of the World Programme's "General Guidelines to Safeguard Documentary Heritage",³ documentary heritage is defined as a document which "documents" or "records" something by deliberate intellectual intent. It is deemed to have two components: the information content and the carrier on which it resides.

For the purposes of the Memory of the World Programme, documentary heritage is defined as comprising items which are:

- moveable;
- made up of signs/codes, sounds and/or images;
- preservable (the carriers are non-living);
- reproducible and migratable;
- the product of a deliberate documenting process.

This normally excludes items which are part of a fixed fabric (such as a building or a natural site), objects on which the signs/codes are incidental to their purpose, or items which were designed as non-reproducible "originals", such as paintings, three dimensional artefacts or art objects per se. However, some documents, such as inscriptions, petroglyphs and rock paintings are not moveable.

Carriers of documentary heritage are made mainly of natural, synthetic or organic materials, subject to instability and chemical decomposition; therefore, science and technology support the development of conservation measures that help to preserve them or salvage them by restoration and its different techniques. Both the content and the carrier can take a large variety of forms.

Examples of documentary heritage include:

- *textual items* such as manuscripts, books, newspapers and posters, among others – the textual content may be inscribed in ink, pencil, paint or other media and the carrier may be paper, plastic, papyrus, parchment, palm leaves, bark, textile fabric, stone or other media;

¹ ALA was founded in 1973 with the purpose of achieving effective collaboration between Latin American countries to speed up the integral development of their archives. It is a professional and cultural non-profit organization, considered as one of the most active regional branches of the International Council on Archives (ICA).

² Argentina, Bolivia, Brazil, Colombia, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador; El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Paraguay, Philippines, Portugal, Puerto Rico, Spain and Uruguay.

³ UNESCO document: CII-95/WS-11 Rev.

- *non-textual items* such as drawings, prints, maps or music;
- *audiovisual items* such as films, discs, tapes and photographs – whether recorded in analogue or digital formats, and by mechanical, electronic or other means – comprise a physical carrier with an information-bearing layer where the content resides;
- *virtual documents* such as websites reside on servers – the carrier may be a hard disc or tape and the content is electronic data.

Moreover, an item of documentary heritage can be a single document of any kind or a group of documents, such as a collection, a holding or an archival fonds. A collection is a set of documents selected individually and a holding is a collection or set of collections held by an institution⁴ or an individual.

II. Mechanisms for the safeguarding of documentary heritage

As mentioned, UNESCO and other international organizations have established various programmes and mechanisms to protect documentary heritage. These actions have focused on meeting the following objectives:

- (a) raising awareness about the existence and importance of documentary heritage;
- (b) generating lists, regulations and instruments to monitor and recover property;
- (c) informing stakeholders and custodians of property.

Among the instruments used to fulfil these tasks, it is worth noting the following:

- **The Memory of the World Programme.** Established by UNESCO in 1992, on account of the poor preservation of documentary heritage and inadequate access to the information provided therein, the Programme has three main objectives:
 - (a) *to facilitate preservation* – by using more suitable techniques, directly providing practical assistance, advice and information, promoting training and linking sponsors with timely and appropriate projects;
 - (b) *to facilitate universal access* – by using new technologies, this aspect includes promoting the production of digital copies and searchable online catalogues and the publication and distribution of books, CDs, DVDs and other products as widely and equitably as possible;
 - (c) *to raise awareness* throughout the world about the existence and importance of documentary heritage.

The Programme has promoted important action – such as the creation of a global register and the publication of the General Guidelines to Safeguard Documentary Heritage – and, more recently, has coordinated work for the drafting of the “Recommendation concerning the Preservation of, and Access to Documentary Heritage, including in Digital Form”, adopted by the General Conference of UNESCO in November 2015.

The Programme also conducts campaigns to raise awareness about documentary heritage, to alert public authorities, citizens, and business and commerce sectors to the need for preservation, and to raise funds.

⁴ These institutions can be libraries, archives, educational, religious or historical institutions, museums, government agencies or cultural centres.

- **INTERPOL Database.** A system that disseminates information on stolen cultural property – including documentary heritage – consolidated in a database with content dating back to 1947, available to both law enforcement agencies and citizens who have been granted specific access rights.
- **Object ID.** An international standard developed in 1993 for describing artworks, antiques and antiquities. It was developed through the collaboration of museums, dealers, appraisers, cultural heritage organizations, law enforcement agencies, customs, art and antiquities specialists and the insurance industry.
- **Red Lists.** A tool designed to help decrease the trafficking of cultural property in different regions of the world. These lists are published by the International Council of Museums (ICOM) and are aimed at museums, art dealers, collectors and customs and police officials to enable them to identify objects that may have been exported illegally.
- **Census-Guide for Spanish and Ibero-American Archives.** An electronic guide and directory of Spanish and Ibero-American archives, established in 1985, within the Spanish Ministry of Education, Culture and Sport. It enables citizens to localize directly archive centres, the collections that they house and the services they provide. It also serves as a tool for the preservation and dissemination of the documentary heritage and safeguarding it against theft.

The Census-Guide has a dual function: it is both a monitoring instrument, focused on the safeguarding of the documentary heritage and an instrument for the basic dissemination of the knowledge of the archives for the government, citizens and users.

Additionally, for the purposes of safeguarding and combating the trafficking of cultural heritage, it is worth taking into consideration the following guidelines that have been adopted or promoted by UNESCO:

- Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954)
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)
- Operational Guidelines for the implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
- General Guidelines to Safeguard Documentary Heritage (Memory of the World Programme)
- Recommendation concerning the Preservation of, and Access to Documentary Heritage, including in Digital Form (UNESCO 38 C/Resolution 55)
- UNESCO International Code of Ethics for Dealers in Cultural Property
- ICOM Code of Ethics for Museums

III. Proposals

Given the risk that exists due to illegal activities conducted to the detriment of documentary heritage, we believe that the Subsidiary Committee could develop measures and recommendations to prevent and/or stop these activities.

A first step could be to explore the correlation of the Committee's work with the Memory of the World Programme, whose main goal is the same as ours: the protection of documentary heritage. The Memory of the World Programme has an institutional framework that could be used both to study the issue of trafficking and to implement some of the actions listed below.

Furthermore, each of the mechanisms described above performs a vital role for the protection of documentary heritage; however, to give greater scope to their actions, we believe that better coordination and possible integration could be advantageous.

Here is an outline of some courses of action currently considered by ALA, which could help to guide the discussions within the Committee:

- (a) **Form a network of specialists.**⁵ Such a network – composed of professionals specialized in a variety of disciplines (such as lawyers, archivists, historians and scientists) from different regions – would analyse in depth the challenges around the trafficking of documentary heritage and develop new archival standards.

Two commissions could be created with the following functions:

- *An archival regulations commission* could focus on the analysis of archive laws, first reviewing the effectiveness of the laws in terms of archival organization and administration, and second, in terms of risk prevention and protection of the documentary heritage.

The commission would conduct comparative analysis and study the results of such laws in the different countries, including the regulatory benefits and shortcomings that they may have in serving their purpose, and their effective protection of documentary heritage.

- *A trafficking commission* would focus on following up the actions proposed in this document, seeking the best strategies to assist each member in the implementation and use of the tools developed. It would also conduct studies to determine which countries are most vulnerable to trafficking and provide specific information to assess the progress of the projects.

- (b) **Enable greater access to information on stolen documents for international organizations such as INTERPOL to carry out investigations.** It is necessary to redefine the requirements of the search for stolen documents. Specifically, an alternative to identification through images must be explored, as the procedure is very limited and almost impossible for countries with a large documentary collection.

- (c) **Take action to generate public policies on archives.** The aim is to achieve regional uniformity in policies related to archive management, which could facilitate the recovery of stolen property. This could be done by providing guidelines and strategies for archival development and the establishment of a network of specialists who could collaborate under the same guidelines.

Similarly, research must be promoted focusing on the trafficking of documentary heritage to generate public policies applicable to the Member States of the network.

⁵ The governing body of the Memory of the World Programme, the International Advisory Committee, has a Technical Sub-Committee mandated to advise the Committee and the members on technical questions concerning conservation and to develop and disseminate information guides on issues relating to the protection of documentary heritage.

- (d) **Promote the development and adoption of archival regulations on the safeguarding of documentary heritage.** Produce standards that harmonizes protection rules and applicable sanctions.
- (e) **Issue a joint statement of support and collaboration among national archives, including the commitment not to acquire documents that belong to other nations.** The statement is a measure of prevention and deterrence, which seeks to prevent the sale of documents.

Such a statement would put an end to the option of commercializing documentary heritage, because through the commitment of individual governments, purchasing interest would be diminished, resulting in the fewer cases of removal of documentary heritage from the countries of origin.

Furthermore, it is worth considering the possibility of establishing commitments via cooperation agreements to meet the proposed obligations.

- (f) **Develop archival monitoring and referencing tools.** Such tools would help to provide an accurate description of the documents, thus providing a level of understanding combining all the predefined planning processes and identification procedures with the integrated establishment of classification criteria.

The development of such tools is crucial for the recovery of stolen or illegally removed goods. Comprehensive archives and efficient monitoring procedures would help to strengthen preventive measures against the trafficking of documentary heritage and, in the event of its theft, could help to gather information that would contribute towards its rapid tracking and recovery.

These instruments, therefore, should be designed as a single, complete and standardized mechanism aimed at facilitating the monitoring of and access to documents.

- (g) **Regulate auction houses' trade in historical documents.** State regulations must contain clear provisions for trade in cultural goods, in which various circumstances should be regulated, such as:

- Implementing a registration and tracking system that allows the auction houses to know the destination of documentary heritage, which must be extended to individuals.
- Auction houses should alert the authorities in charge of preserving documentary heritage when they are presented with the possibility of auctioning such documents.
- Regulating the pre-emptive right of auction houses in favour of the authorities in charge of safeguarding documentary heritage.

This aims at preventing auction houses from having a role in the trafficking of documentary heritage, and rather making auction houses play a preventative role in conjunction with the authorities responsible for its preservation.

- (h) **Incorporate into documents non-invasive identification mechanisms.** Conduct studies to assist with the identification of documents by means of instruments accessible to users.

Various studies have been conducted using science and technology to create means to identify documents allowing proper protection; however, to date such means have proved costly or invasive to the carrier materials.

The proposal is to conduct studies involving an interdisciplinary group that would create suitable measures for the protection, conservation and safeguard of the documents.

- (i) **Develop programmes for making facsimile versions of historical documents available to everyone.** It was long thought that facsimile versions contributed to the trafficking of cultural property; however, from experience, it has been ascertained that these documents allow law enforcement agencies to locate and recover documentary heritage.

This is evidenced by the fact that it is attractive for illegal traders to flaunt their purchases, creating a chain of communication that eventually reaches police forces in charge of prosecuting traffickers.

The archives must be open to the possibility of creating facsimile versions of the most significant documents of their country, and make them available to interested parties, in exchange for compensation, which could be invested in protecting the original documents.

- (j) **Strengthen the Census-Guide.** Such mechanisms also help with dissemination and awareness-raising on the value of the documentary heritage of each country, while serving to protect and recover trafficked documentary heritage. It also encourages joint participation among citizens and institutions responsible for public safety.
- (k) **Continue with the development of Red Lists on documentary heritage.** It is essential to have a reference that enables customs authorities, police, traders, antique dealers and other interested individuals to know the characteristics of documents that are liable to be stolen.

These tools should be developed in collaboration with the International Council of Museums (ICOM).

IV. Conclusion

Various institutions and organizations are already fighting to recover cultural property. The General Archive of the Nation of Mexico is aware that certain countries have created academic bodies of experts responsible for the management and care of documentary heritage – improving the register of people with direct access to this property – and have encouraged interagency coordination for the recovery of stolen documents. There are, however, no comparative studies or general recommendations reflecting the different experiences of these countries in support of documentary heritage.

In that regard, this paper aims to become a reference to help guide studies on the fight against trafficking of documentary heritage within the Subsidiary Committee of the Meeting of States Parties to the 1970 UNESCO Convention, reiterating the willingness of the Mexican State and its General Archives to work with this academic body.