

Observations of the Member States on the two preliminary studies of the desirability, the technical and legal aspects, and the scope, rationale, added value, and administrative and financial implications of a standard-setting instrument on the protection and promotion of museums and collections

Federative Republic of Brazil

I refer to Patrick O’Keefe’s “*Preliminary study on the advisability of preparing an international instrument for the protection and promotion of museums and collections*” and to François Mairesse’s “*Etude sur l’opportunité, l’étendue, les raisons et la valeur ajoutée d’un instrument normatif sur la protection et la promotion des musées et des collections (aspects muséaux)*”, respectively submitted to IBRAM’s specialists Rose Moreira de Miranda, General Coordinator for Museum Information Systems and Cícero Antonio Fonseca de Almeida, Director of the Department for Museum Processes, for their commentary.

I have the pleasure to forward hereafter the main points raised by the Brazilian specialists in their commentaries:

a. The need for a standard-setting instrument that can address the issues of the promotion and the protection of museums and collections is beyond discussion. Both authors went deeply and critically into their areas of expertise to bring forth conclusions that reflect their high competence.

b. However, it should be pointed out that most of the reasons and examples used in those studies are centred around the museological experience of some actors, namely European countries, the United States, Australia and New Zealand, with only occasional reference to museological policies, legislation and practice carried out in African or Latin American countries. Yet the latter are responsible for important theoretical as well as practical innovations in the field of museums, as acknowledged by quite a few specialized authors, as well as international organizations such as ICOM, amongst others. The choice of Brazil to host ICOM’s 23rd General Conference, which shall discuss the issue of “**Museums: memory+criativity=social change**”, bears eloquent testimony to the relevance of actions being conducted in Africa and Latin America today on behalf of social inclusion and community engagement.

c. Adopting a recommendation, as an alternative to a convention or a declaration, is indeed the appropriate choice, for the reasons appointed by O’Keefe, which relate to its easier and faster adoption, combined to a considerable degree of authority and the capacity to influence national legislation and practices positively.

d. In the recommendation being considered, IBRAM endorses the adoption of ICOM’s concept for museums, as stated in paragraph 22 of the O’Keefe study.

e. Concerning paragraphs 34 to 38 of the O’Keefe study, it is noteworthy to mention that in many Latin American countries, as well as in Africa, a significant number of museums are not legally structured. Neither public nor private, they are the product of the resolve of individuals or social groups that, aiming to preserve identities and memories, founded museological institutions that they themselves manage, yet with no concern of legal regulations. Those are socially legitimate institutions, functioning within their communities as memory houses, knowledge centres, and centres for local development.

With regard to the creation of museums within commercial and financial institutions, O'Keefe remarks that, in the event of bankruptcy, those institutions might have their cultural heritage seized to pay their creditors, which might be contradictory to well-established museum principles. That, however, has not been the case in Brazil, where the liquidation of some banking institutions did not result in the seizure of their invaluable artistic and historical collections. In short, the presence of domestic legislation that ensures asset protection has made it possible that, in the event of bankruptcy, collections remain under protection and are not alienated.

In fact, as of 2009, with the enactment of Law 11.904 on the legal status of museums (*Estatuto dos Museus*), important sentences were pronounced that established the inalienable character of collections. Although such judgements are not final, there is a tendency towards invoking the *Estatuto dos Museus* to grant cultural property a different treatment and not subjecting them to judicial auctioning.

One first example refers to Banco Santos S/A, declared bankrupt in 2005. A sentence imposed that the Bank's assets, amounting to more than 4000 items, be inventoried and then declared inalienable, due to their cultural and public relevance. Part of the collection is now under custody in museums in São Paulo; one sculpture is on display in a public square.

A second important example benefitted the Tikuna indigenous community, in the state of Amazonas, which was sued by that state for having invested government funds in noncompliance with the approved budget. As the community had actually no means to make up for the unlawful expenses, a first judge ruled that the Maguta Museum, belonging to the Tikuna, should be seized as payment. That sentence was however overruled by a higher instance, based on the above-mentioned *Estatuto dos Museus*: due to its public cultural purpose, the Maguta museum could not be used to cancel debt.

f. As regards paragraphs 42 to 46, actions addressing democratization and access should be centred on the development of information and communication networks that publicize cultural property preserved in museums and collections, as stated in IBRAM's concept paper for the UNESCO experts meeting on the "Protection and Promotion of Museums and Collections" (Rio de Janeiro, 11 – 13 July 2012), entitled "Inputs for a Debate on, and Construction of an International Normative Instrument for Preservation and Promotion of Museums, Museological Heritage and Collections".

g. Concerning the correlation between theft and the incorrect identification of objects, it should be stressed that, whereas scarce resources and unqualified personnel have often deprived museums of adequate cataloguing, countries like Argentina, Chile, Colombia, Cuba, Portugal and Spain have invested in the development of technical digital tools for inventorying and managing museum collections, which now reflects on an expressive increase in the number of inventoried items.

h. Financial resources is the next item, under which O'Keefe draws a list of advantages and disadvantages of IBRAM's proposals, as contained in the aforementioned concept paper, and refers to state investment and the creation of a fund. IBRAM trusts that "building a country is also a political and cultural project" (Martín-Barbero, 2004, p.195), while acknowledging that not all economic systems favour government-financed culture.

Together with education and health, culture does require specific and regular investment so as to achieve higher levels of development, providing new social, economic and political assets. This is why museums and collections urgently require the formulation and

the implementation of government policies which can potentiate the multiple roles of those institutions.

i. In his paragraphs on modernization, O’Keefe mentions the fluid nature of the term “infrastructure”. IBRAM considers it of utmost importance that the recommendation to come may designate a new term-of-art, capable of embracing all the different types of existing museums, including those that do not use buildings as a centre for their preservation, communication and research activities. Those, among others, would be “territorial” museums (ecomuseums, natural parks etc), virtual museums, and collections that are not kept in museological institutions.

IBRAM considers here that the broader a museum’s legal framework, the easier it will be for it to compete for public or private funds.

It should also be noted that strategic planning instruments are crucial for individuals and institutions in charge of collections to define the identity of their actions, and prioritize those actions in a certain time span. Ibero-American countries such as Spain and Brazil have already proceeded to consolidate management instruments specific to museums.

j. There is agreement with Mairesse in that the recommendation to be adopted should integrate all the features of museums, and should serve to reassert their traditional functions while adding others, more contemporary. Mairesse is right in seeking clarification of terms such as protection, promotion, museum and collection, among others, found in recommendations, conventions or international texts, yet commonly not thoroughly defined in local legislations.

k. In what concerns the notion of permanence, contained in the *Estatuto dos Museus* definition, differentiating stability and sclerosis is a welcome disposition, as indeed “the form of the museum can float and be reinvented from generation to generation”. IBRAM agrees that “the museum, as an establishment, rests over an intergenerational contract”, and sees this statement as an essential point allowing for countless creative possibilities in the field of museums, in line with what is currently practiced in Brazil in the context of the National Policy of Museums, of which IBRAM is the Coordinator.

l. Concern about the absence of explicit definition for “collection” is shared by the IBRAM specialist, who therefore insists on the importance of the new normative document addressing the issue of protecting museum collections.

m. IBRAM praises the Mairesse study for its in-depth approach of issues not fully addressed in the Final Conclusion of the Rio de Janeiro expert meeting, and for highlighting some essential questions which in IBRAM’s understanding still want reflection:

- In the new recommendation, attention must be paid to establishing a sharp definition of concepts such as “collections”, which to this day remain imprecise. Accurately defining “collections” shall ensure that those not kept in museums get proper protection as well, under an adequate regime.
- A new standard-setting instrument should conduce to devising a contemporary vision of museums as institutions, stressing that they must stand up to society’s expectations as far as their role of protecting and promoting is concerned, and make the most of their ability to promote social and economic development, leaving behind conservative views to embrace one that encompasses all the new functions up-to-date museums should carry out in society.
- Museums must commit themselves to responsibly managing their collections; their importance as centres for research should be emphasized.
- Fresh discussions should focus on setting up a fund to finance the promotion of museums and research.

- The new standard-setting instrument shall necessarily resume the principles of two other important documents: the 1960 Recommendation concerning the Most Effective Means of Rendering Museums Accessible to Everyone, and the 2005 Convention on the Protection and the Promotion of the Diversity of Cultural Expressions.
- Finally, IBRAM recognizes the significance of a new UNESCO standard-setting instrument, especially when it comes to its international outreach potentially mobilizing a greater number of museum-related institutions worldwide.

Republic of Croatia

On the basis of the last *Preliminary study on the advisability of preparing an international instrument for the protection and promotion of museums and collections (legal and technical aspects)* and *Etude sur l'opportunité, l'étendue, les raisons et la valeur ajoutée d'un instrument normatif sur la protection et la promotion des musée et des collections (aspects muséaux)*, and linked to Decision 11 from the 190 session of the UNESCO Executive Board, which, taking into account the developmental role of museums and the museum profession as instruments of social cohesion, transformation and the development of inter-cultural dialogue, emphasizes the need of passing a document that will serve as a standard setting instrument in the protection and promotion of museums and collections, the Ministry of Culture of the Republic of Croatia is submitting the following stance on the subject.

Support is extended to UNESCO's initiative on passing a document that will definite at the international level standards in the preservation, protection and promotion of museums and collections and which will undoubtedly contribute to heightening awareness on the need for the systematic care for heritage that is kept and processed in museums and collections in line with the valid regulations on museum activities and protection of cultural heritage at the national level. Given that the undertaken studies represent initial documents relating to the very procedure on adopting the document, to terminological and legal aspects, and taking into consideration national legal frameworks and standards of individual member countries, at this stage we have no additional observations or comments on the submitted study. The Ministry of Culture and the Republic of Croatia are systematically working on the adoption and enhancement of the legal framework linked to the promotion of museum activities and protection of cultural heritage and in the near future plans (second quarter of 2013) to pass Amendments to the existing Museum Act.

The Ministry of Environmental and Nature Protection of the Republic of Croatia agrees with the form of the future document as a Recommendation.

It is stated in item 9 that the study was prepared after decades of consultations with member countries and experts, a fact that convinces us that it was thoroughly prepared and that Croatian experts also participated in this activity, the more so as the example of the Vukovar Museum is mentioned under item 56.

Nevertheless, as museums include exhibits of flora and fauna and their parts or objects made of plants or animals, attention should be drawn to the CITES Convention, particularly items 4, 68 and 83. The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Washington, 1975) is an international agreement the purpose of which is to prevent uncontrolled international trade and commercial use of endangered species, maintain environmental balance within species populations that are traded internationally and assist member states in attaining sustainable trade levels. To date, this Convention has been acceded by 177 countries, affirming our belief that numerous countries will welcome the inclusion of this Convention among the standards for the protection and promotion of museums and collections.

Kingdom of Denmark

Denmark would like to thank the Secretariat for the opportunity to comment on the preliminary study on a possible standard-setting instrument on museums. We have read the study with great interest; it points to many crucial issues that are very relevant for the challenges and opportunities that museums are facing today. Actually, we find the proposal for international regulation very much in line with our own national legislation on museums.

Nevertheless, the study also comprises some considerable weaknesses. Firstly, we are somehow puzzled by the fact that the study takes as starting point that it "will strongly propose that the new instrument on the protection and promotion of museums take the form of a recommendation". From this perspective it seems that it has already been decided that a normative instrument should be developed. We see no real discussion on advantages and disadvantages, but rather the study provides concrete proposals for the content of the suggested recommendation. This can of course be helpful to better understand the scope and added-value of a recommendation, but in our view this kind of study is more relevant once the question on "the desirability of a standard-setting instrument" has been clarified.

The question of desirability is, from our perspective, very much related to the assessment of the administrative and financial implications that such a new instrument may bring to the Organization. This kind of assessment is not included in the preliminary study, but will be crucial for Denmark if we are to take a decision on this item at the upcoming executive board.

Republic of Ecuador

Criterios sobre el documento: *Preliminary Study on the Advisability of Preparing an International Instrument for the Protection and Promotion of Museums and Collections (Legal and Technical Aspects)*, de la autoría de Patrick J. O'Keefe

Sobre el documento es preciso reconocer muchos adelantos en temas de política y direccionamiento internacional en administración y protección de bienes museables, sin embargo es preciso tener un tiempo razonable para un análisis más exhaustivo.

El Ecuador expresa su preocupación por las directrices aplicables al régimen de adquisiciones y administración de museos y colecciones, contante del estudio preliminar para la preparación de un instrumento internacional de protección y promoción de museos y colecciones, por el ICOM y la Unesco, en razón de las siguientes consideraciones:

1. El Ecuador mantiene en su legislación interna, desde 1864 en el Código Civil y desde 1911 en normas de aplicación especial, la prohibición expresa de sacar fuera del país los bienes que constituyen patrimonio nacional, al tiempo que declara en propiedad exclusiva del Estado Nacional los bienes arqueológicos que se encuentran en los museos, superficie, subsuelo, en manos públicas o privadas (Art. 9 de la Ley de Patrimonio Cultural).
2. Dichas prohibiciones y reconocimientos, constituyen por tanto mandatos de cumplimiento obligatorio, siendo cualquier inobservancia a dichos postulados sancionados con privación de la libertad y penas civiles y administrativas.
3. Sabemos que en la mayor parte de legislaciones de América Latina y el Caribe, igual reconocimiento y prohibición se mantiene sobre el patrimonio arqueológico, que en caso de nuestros países vendría a ser todo elemento de la cultura material, realizado en cualquier soporte en la época prehispánica (antes de la llegada de los españoles, portugueses, etc.)
4. Dichos elementos no podrían ser comercializados o adquiridos, ni menos en contextos internacionales para colecciones de Museos, ni legitimados al amparo de instrumento internacional alguno, ya que dicha transacción sería considerada de objeto y causa ilícita y por tanto en razón de nuestras legislaciones sujeta a repatriaciones y requerimientos fiscales internacionales.
5. Las consideraciones antes señaladas no se encuentra subsanadas en los siguientes considerandos del proyecto en análisis, ni bajo la figura de Theft o Illicit Traffic.
6. La observación de Ecuador es que se considere las particularidades de las legislaciones de América Latina y el Caribe que le otorgan a los objetos patrimoniales y por sobre todo a los arqueológicos, a fin de prohibir su adquisición, cuando el régimen legal del país de origen de dicha elemento material prohíbe su comercialización, adquisición, transferencia o cuando su propiedad ha sido asumida legalmente por el Estado Nacional.

Respecto del Documento *Etude sur l'opportunité, l'étendue, les raisons et la valeur ajoutée d'un instrument normatif sur la protection et la promotion des musées et des collections (aspects muséaux)*, de Francois Mairesse, consideramos que es un documento pertinente y adecuado en sus contenidos puesto que destaca de manera importante los nuevos roles, que en la época actual, cumplen los Museos y como estos deben ser tomados en cuenta.

Federal Republic of Germany

Based upon the two explorative studies on the desirability and on the legal, technical and museological aspects of a new international instrument for the protection and promotion of museums and collections, the responsible authorities in Germany are sceptical about the added value of investing in the process of elaborating and adopting of such an instrument.

The preliminary studies correctly state the existence of multiple provisions in already adopted standard setting instruments which relate to the work of museums and collections. However, there are deficits regarding agreed upon definitions. Nevertheless, both studies come to the conclusion that a would-be new normative instrument should take the form of a Recommendation as this would give member states flexibility in implementing further steps as fit in their context.

As a result, the normative instrument would probably not go much beyond already existing non-binding professional recommendations on the national (e.g. German Museums Association, regional associations of museums) and on the international level (ICOM). In considering the administrative efforts and financial costs for the elaboration, the negotiation and adoption of such a would-be new normative instrument, the added value of such an instrument in comparison to an evidence based register of good and excellent practice in the management of museums and collections remains unclear.

Concluding from this, UNESCO could rather consider to support capacity building based on systematised presentation of already adopted normative instruments and to further help enhance and rely on the worldwide expertise of ICOM and its subsidiary organs as well as public consultative centres for museums (mostly NGOs) on the national level (Germany: KMBL = Konferenz der Museumsberatung in den Ländern) and international level (Europe: NEMO = Network of European Museums).

Italian Republic

I fully agree on the opportunity to create a new legal instrument on the promotion and protection of museums and collections to be able to represent unitarily and call attention to each and every feature of such institutions. As proposed in the documents under consideration, this new instrument should make reference to Unesco's *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005). It is, in fact, the only international legal instrument that addresses both the notion of protection and that of promotion, and making clear reference to it would also help raise awareness on the precious contribution that museums may give to reaching its aims.

I also agree on the opportunity to particularly focus on the three priorities proposed by Mairesse, i.e.: 1) the functions and role of the museum within the society and the community; 2) the importance of museum deontology; 3) the creation of an international observatory on museums

I have no doubt that the notion of museum and that of collection do not overlap, and the distinction proposed by Mairesse is convincing. However, local museums may be generated by the desire to enhance the existing heritage by exhibiting collections. Many recent examples are testimonies of how the promotion of the intangible dimensions of heritage does not imply we are dealing with sites that only belong to the strict domain of "interpretation centres").

The social role of the museum should comprise giving a relevant role to "heritage communities" and the various agents of the territory, who are potentially the expression of active citizenship. Such dialogues and relationships support the museum's aspiration to play the role of a democratic instrument fostering the inclusion of diversities and the construction of feelings of belonging and identity.

The issue of museum professionals is quite sensitive today, when the culture sector may less and less count on adequate funding, due to the economic-financial crisis we all witness. Museum resources (both financial and human) have been reduced, and we face serious difficulties. Volunteers have become crucial resources even for management. However, to tackle the issue of professional training is evermore urgent, sensitive, and unavoidable.

With respect to the issue of the restitution/management of human remains and sensitive material, the code of ethics points to crucial current dilemmas. We should be able to count on more detailed and shared indications on the consequences of a dialogue that is underway with both Nation States and communities.

Concerning the "legal and technical aspects" drafted by Patrick J. O' Keefe, I agree with him when he writes that "periodic reporting has not been a success, and a select number of recommendations are now subject to monitoring". Notwithstanding its legal value, in fact, the recommendation is a more agile and quick instrument to draft. It may gather information and specific contributions coming from professionals, which may undoubtedly be more elaborate than they would be in a simple declaration.

It goes without saying that the recommendation, as a guideline, may address both museums and private collections of local public interest. In relation to this issue, museum professionals and organizations that hold specific technical and scientific know-hows should be called on and get involved in the debate. They would, in fact, provide useful contributions to the protection aims of the recommendation.

In the Italian legislation, a collection is not necessarily a museum, as the museum is a public cultural institution. This points to how important such distinction is, even if the definition of museum drafted by Icom stays a reference point. A "heritage collection" (in Mairesse's terms) undoubtedly deserves to be taken into consideration. If its cultural value is assessed, its recognition as public heritage should be advocated for, as this would lead to its access to the national safeguarding systems: "an updated recommendation that incorporates all developments in one document (...) can be used as a basis for modification of existing national legal practices", and it may expand the role of museums and collections.

In accord with the Italian national legislation, this is actually the current practice of our Regional administrations. If "a museum could well be the institution chosen by the State to perform the activities indicated", small museums and collections of public interest, if called on (and with the support of experts and specific organizations), may also find appropriate occasions to reach national museum standards and be officially accredited by public institutions.

Kingdom of Norway

Norway would like to thank you for giving the possibility to send comments on the preliminary study on a possible standard-setting instrument on the protection of museums and collections.

Norway would like to give the following short remarks within the given deadline:

- The consultation period has been too short to have a proper discussion at a national level.
- The study proposes a recommendation in the introduction, already before having developed arguments for and against,
- With regard to UNESCO's present economic situation; is a new standard-setting instrument the right way to prioritize?
- We do not find that the study clearly demonstrates the added value a new UNESCO instrument will have.

Russian Federation

Nous avons reçu la lettre du Président de l'ICOM de la Russie Monsieur V.Tolstoy avec ses commentaires à deux études des experts indépendants sur l'instrument normatif sur la protection et la promotion des musées et des collections.

L'ICOM de la Russie considère ces études comme très professionnelles et qu'elles abordent de manière complète tous les aspects de l'activité de musée. Généralement favorables à l'idée du nouveau règlement la Fédération de Russie estime qu'il serait plus convenable d'élaborer le document réglementaire sous la forme de la Convention. Cette forme semble être plus appropriée pour mieux intégrer tous les points des conventions et des recommandations adoptées par l'UNESCO dans ce domaine au cours des années précédentes. Selon l'ICOM de la Russie ce nouveau document pourrait unifier et réglementer les activités des musées et des collections en pleine conformité avec les exigences actuelles.

De même, la Commission nationale russe pour l'UNESCO informe que l'analyse de ces études est en cours de préparation par les experts du Ministère de la culture de la Fédération de Russie. Nous vous le transmettrons dès que possible.

Republic of Slovenia

After consultations with our experts and stakeholders, I may send to you our comments:

We would like to thank you for all efforts made in preparation of this document of essential importance for museums and their collaborative strategy.

We are suggesting to amend the sections to theft and illicit traffic (pp. 71 - 85) with terms of "due diligence" and "good faith". Both terms are very important in implementing both the 1970 and the UNIDROIT conventions and strongly related to museums when acquiring cultural goods.

Kingdom of Sweden

Thank you for giving us the opportunity to comment on the study on the desirability of establishing a recommendation.

We are happy to forward to you some comments from the Swedish National Commission for UNESCO on the draft text. It is unfortunate that one of the independent expert studies which we were supposed to comment upon was provided only in French – which, to some extent, complicates the ‘close cooperation with Member States’ in which we were invited to participate. If close cooperation is desired we would like to underline that this is a complicated text given to us very close to the Executive Board meeting. Furthermore, the text itself also seems to argue that there is only one outcome of the study: the establishment of a recommendation – a conclusion we would like to question.

Taken into consideration the present financial situation and the number of recommendations already established within the field of culture we would like to know about the administrative and financial burdens which will fall upon UNESCO if and when, such an instrument is established. Is there room for yet another recommendation – will Member States have the resources for the follow-up, will there be extra-budgetary resources available for the UNESCO’s work with such a text?

The English expert report is very interesting and the expert has come up with an educational text, which is of value for people outside the museum community as well. In this text there is an extensive compilation of earlier UNESCO documents related to museums through which it is evident that museums are at the heart of our common work, but this opulent list does not convince that yet another text will make a dramatic difference.

In the English text there is no reference to proposals that the recommendation should relate to neighboring subjects such as the UNESCO Memory of the World program or to the World Heritage Convention or the Convention for the Safeguarding of the Intangible Cultural Heritage. We would also have liked to have included the aspect that museums can be a very important player in development aid – culture as a tool for financial development as well as for general development of societies. In short, we miss a more definite UNESCO angle to the text; how would such a recommendation further not only museums and museum cooperation, but UNESCO?

However, the Swedish National Commission for UNESCO does not take a negative view to the establishment of such an instrument – per se. We are sure that it can be of help to the international museum community and to further Member States policies on museums.

But we do not think that a text of this kind should deal with political aspects such as opening hours, tax incentives for gifts and entry fees – UNESCO should refrain from micro-management in its normative texts: common goals should be established - but they can be reached by following different pathways, in the cultural field there really is not any ‘one size fits all’.

We miss a few aspects in the text: more reflection on the digital aspects of museum activities – a trend which has been going on for quite some years now where entire collections are made available on-line or on digital tools. Secondly we are not clear about the consequences of the proposal to give ICOM a major role in the follow-up of recommendations – do they have long-term resources for such responsibilities?