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**UNITED NATIONS EDUCATIONAL, SCIENTIFIC
AND CULTURAL ORGANIZATION**

**COMMITTEE FOR THE PROTECTION OF
CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT**

**Sixth Meeting
Paris, UNESCO Headquarters, Room XII
14 – 16 December 2011**

**Item 6 of the Provisional Agenda:
Information Analysis and Feasibility Study Regarding the Voluntary
Information Exchange of Measures for Implementing the Second Protocol**

Introduction

1. The fifth meeting of the Committee for the Protection of Cultural Property in the Event of Armed Conflict (the “Committee”), after considering Item 9 of the Agenda, document CLT-10/CONF/204/6, *Consideration of a proposal concerning a database*, decided to request the “Secretariat to undertake an information analysis and feasibility study for a possible database for the voluntary exchange of information by the Parties concerning legislation, jurisprudence or other matters relevant to the implementation of the Second Protocol.”
2. A database for the voluntary exchange of information was discussed at the third meeting of the Committee (UNESCO Headquarters, 4 - 6 June 2008) when considering Chapter V of the Guidelines (Monitoring the Implementation of the Second Protocol) and in particular paragraph 104 of these Guidelines. It was decided that this database would be separate from periodic reporting responsibilities, and it was emphasized in the report that this network ought to be an evolving, dynamic database that could be improved over time and funded by extra-budgetary contributions. As part of this discussion, the Assistant-Director for Culture emphasized that the UNESCO Database of National Cultural Heritage Laws¹ relied entirely on extrabudgetary funding from the United States (US\$ 239,600, 2008-2009) and that the Secretariat was not in a position to maintain it without additional financial and human resources. This situation has not changed.
3. This document will provide an overview of the Information Analysis and Feasibility Study undertaken by the Secretariat, including an analysis of options to optimize the voluntary exchange of information among Parties.

Overview of existing UNESCO relevant databases of cultural heritage

- **The UNESCO Database of National Cultural Heritage Laws (hereafter, “the Natlaws database”)**
4. This database was approved by the UNESCO General Conference during its 32nd session in 2003, following the 12th session 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 the meeting of the States party to the 1970 Convention during the same year. Under a funds-in-trust agreement, the United States Department of State has made available US\$ 557,695 in total funding for its creation, maintenance, human resources, and for funding the translation of legislation and other legal texts (into one of the six official UN languages, with a preference for English).
- **The UNESCO databases for the 2003 and 2005 Conventions**
5. The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (“2003 Convention”) required the development of one database containing the following information: the Representative List of the Intangible Cultural Heritage of Humanity, the List of Intangible Cultural Heritage in Need of Urgent Safeguarding, the register of best practices and

¹ <http://www.unesco.org/culture/natlaws/index.php?&lng=en>

international assistance.² The Secretariat of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which is also part of the Culture Sector, is currently in the process of seeking extra-budgetary funds for the creation of a database for the latter convention, as stipulated in its operational guidelines on information sharing and transparency. The database of the 2003 Convention has been developed internally by IT professionals who were specifically hired on a temporary basis (i.e. not UNESCO staff members) to develop and manage it. The plans for the 2005 Convention initiative should be based on the same approach.

Summary of Information Analysis and Feasibility Study

- **Content of a Voluntary Information Exchange Database**

6. The summary of the periodic reports on the implementation of the Hague Convention and its two Protocols, produced by the Secretariat, is currently the only method of information exchange among Parties apart from any voluntary direct contact.
7. To complement this information exchange, the Voluntary Information Exchange Database (hereafter “Database”) could contain pertinent information regarding the national implementation of the Second Protocol, including periodic reports, military regulations, national legislation, judgements, focal points for all official documents and correspondence on the national implementation of the Second Protocol, educational programmes and similar information.
8. If the Database is created, the volume of information received during the first few years is likely to be sparse. For example, the submission of the kinds of information in the foregoing paragraph may take longer than expected or the information may not be available. It is expected that there will be a certain time period during which the Database would be built, including the time for the Secretariat to solicit information from Parties and then post it online. Alternative ways of sharing information are discussed in paragraphs 26-30, below. These methods may be used in conjunction with, or even instead of, the Database.

- **Users and Benefits to Users**

9. This Database could be used by Parties, non-Parties, the Secretariat, concerned intergovernmental and non-governmental organizations, civil servants, the military, cultural heritage professionals, scholars, students and other individuals interested in this subject matter. The main stakeholders in this database are Parties, and perhaps High Contracting Parties preparing for ratification of, accession to, acceptance of, or approval of the Second Protocol.

- **Creation of the Database**

- **Technical parameters**

10. The technical parameters of the Database should include preferred search methods, content and scope. The national laws, regulations and case law will be sorted based on the provisions of the

² www.unesco.org/culture/ich/index.php?lg=en&pg=00011

Second Protocol they assist in implementing, rather than being displayed in chronological order. In particular, a search for each article of the Second Protocol will yield information on the ways it was implemented by Parties. This will enable comparison and facilitate the development of new laws by revealing practices in other jurisdictions should a Party not have implemented that individual clause yet.

○ **Considerations regarding the external development of the Database**

11. External development of the database begins with a lengthy bidding process and then involves several complications and potential additional costs. Although UNESCO may be able to control the quality of candidates through a required open bid, the bidding process involves lengthy procedures, consultation with internal professionals, the request of three estimates from external companies, and the review of such estimates. This may result in considerable costs and delays.
12. Further, working and communicating with an external contractor is harder and more expensive than with an inside developer. For example, UNESCO may be charged for every on-site visit, including travel costs. However, UNESCO may monitor contractual compliance because payments to an outside contractor are made when the work under the contract has been completed.
13. Other issues to consider include the security of the data if it is managed externally; use of technologies that may be different from those used by UNESCO; the need to create new contracts for any change to the Database; potential legal liabilities; and human resource costs (approximately US\$ 106,000 based on the Natlaws database experience).

○ **Considerations regarding the in-house development of the Database**

14. The in-house development of a database replaces the bidding process with the recruitment of an IT professional who would develop and subsequently manage the database internally. There are currently no foreseen problems as to capacity, hosting/storage of information, or compatibility of technologies. For the lists created for the 2003 Convention, the hiring of an external developer resulted in several problems that finally led to hiring an internal IT professional.
15. As part of this plan, an internal developer will be working in-house and therefore be in continuous contact with the UNESCO section that hired him or her. This will improve communication and allow the developer to better understand the needs and the objectives of the creation of the Database; however, the salary of the developer must be paid from extrabudgetary resources. Although current information technology professionals have the knowledge and expertise to create the Database, they are fully taken by their work and cannot also develop the Database.
16. Other issues to consider include the fact that an internal developer will use UNESCO's standard technology to design and operate webpages, facilitating potential links with other internal UNESCO webpages; all updates and changes to webpages will be included in the cost of the in-house developer's contract; and the costs based on anticipated needs to create the database for the 2005 Convention as of 15 March 2011 were US\$ 53,000.

- **Accessing public vs. private webpages of the Database**

17. Similar to the system used by the Lists for the 2003 Convention, it would be technically possible to create a database that allows access rights to non-public web pages, such that one portion would be available to the general public through the internet, and one or more other platforms would be available privately to the Parties through the internet by entering an administrative password.
18. If a database that allows access to non-public pages is considered to be too expensive, the alternative way for parties to submit information is by entering it in an interactive PDF form that could be available on the website of the database, or simply by submitting it via email to the website administrator who will verify the information and upload it. In all scenarios, there is the need for a person in charge of verifying the submitted material.

- **Synergy with other UNESCO databases**

19. Unfortunately, the extension of existing UNESCO databases funded by the regular budget is not possible since they are separated by administrative procedures that allocate financial and human resources to each programme. Further, each of the above-mentioned databases serves a particular purpose, with the aim of collecting targeted information on a specialized subject and serving a specific audience. For example, the 2003 Database serves the 2003 Convention, which provides information for the Parties on information pertinent to intangible heritage. There are occasions, however, where information may be relevant to more than one database. In these cases, and only if the Database is created, links may be added between database webpages so that mutually relevant information can be easily cross-referenced once it is published on any linked page.

- **Advantages of creating the Database**

20. The benefit of creating the Database would be to have a new tool to provide up-to-date information on Parties' implementation measures on an ongoing basis. This Database may serve the following important ends: increase awareness of the Second Protocol, the First Protocol, and the 1954 Hague Convention; increase ratification of the Second Protocol; encourage broader implementation of the Second Protocol by Parties

- **Disadvantages of creating the Database**

21. The disadvantages of creating the Database are the current lack of human and financial resources to create and maintain it, and the time it would take to be fully operational given the uncertainty of whether enough information could be furnished to make it an efficient tool in the near future.
22. Related to general operational complications is the ability of Parties to submit national implementation measures and legislation in French or English. If the information submitted is not in French or English, then translation into one of these languages - or translation from one of these working languages to the other - must be required at a national level. If this is not financially possible, then the extra-budgetary funding process used by the Natlaws database could be a potential model.

23. Further, there were initial difficulties in getting the translation process started with the Natlaws database, and there has been unequal participation in the translation of laws. For example, it took an average of 4 to 6 months to conclude contracts with national authorities due to internal issues that included identifying the entity that would translate the text.

- **Cost Effectiveness**

24. The Database will be effective only if enough information is submitted and the project receives enough extrabudgetary funding to be a useful and sustainable tool. It would be less costly to create the Database internally.

- **Extension of an Existing Database**

25. Unfortunately, as mentioned above, the extension of existing UNESCO databases funded by the regular budget is not possible since they are separated by administrative procedures that allocate financial and human resources to each programme.

- **Alternative Ways to Make Information Available**

26. If, as mentioned above, the information that would comprise the Database is not voluminous, then other possibilities for information sharing may be explored. Options may include inserting links on the Second Protocol web page, such as links to the International Committee of the Red Cross national implementation database and to available published legal decisions. The benefit of using these links would be to allow Parties easy access to pertinent information regarding the Second Protocol. It may not, however, have the search capability for issues specific to the national implementation of the Second Protocol.

27. Allowing for the addition of PDF documents and/or links to caselaw could provide useful implementation information that, in conjunction with the periodic report, may be sufficient to aid the exchange of information without the cost and time of creating a new database. The drawback of simply providing the information without having real search capability is that users of the Second Protocol website may have to extensively research available documents to be able to compare information.

- **Advantages**

28. This is the least expensive option given that the information can be maintained by existing UNESCO professionals. It may also provide the needed platform to voluntarily exchange information until it is clear that enough relevant information exists to create a database.

- **Disadvantages**

29. The main disadvantage with this option would be that it would be difficult to efficiently search for specific information. Since it would not be part of a database, a general keyword search of the UNESCO website would generate options that one would have to search through for relevance. It also may take time to upload information onto the site.

o **Cost Effectiveness**

30. The costs for this option would be covered by the existing regular budget and human resources. There are no additional foreseen costs.

Secretariat 's conclusions:

31. The Secretariat proposes to improve the existing method for the voluntary exchange of information by updating the existing UNESCO webpages for the Second Protocol, as discussed above.

DRAFT DECISION 6.COM 4

The Committee:

1. *Recalling* Resolution 12 of the Third Meeting of the Parties requesting the Committee “to further consider the issue of a possible database for the voluntary exchange of information by the Parties concerning legislation, jurisprudence or other matters relevant to the implementation of the Second Protocol;”
2. *Recalling* Recommendation 9 of the Fifth Meeting of the Committee, requesting “the Secretariat to undertake an information analysis and feasibility study for a possible database for the voluntary exchange of information by the Parties concerning legislation, jurisprudence or other matters relevant to the implementation of the Second Protocol” and “to present the results of the information analysis and feasibility study (and recommendations) at its Sixth Meeting;”
3. *Having considered* document CLT-11/CONF/211/4 concerning the Information Analysis and Feasibility Study Regarding the Voluntary Information Exchange of Measures for Implementing the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict;
4. *Thanking* the Secretariat for its work;
5. *Requests* the Secretariat to improve the existing method for the voluntary exchange of information by updating the existing UNESCO webpages for the Second Protocol.