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# 37 C

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### PRELIMINARY STUDY OF THE TECHNICAL, FINANCIAL AND LEGAL ASPECTS ON THE DESIRABILITY OF A STANDARD-SETTING INSTRUMENT ON PRESERVATION AND ACCESS TO DOCUMENTARY HERITAGE

#### OUTLINE

**Source:** 36 C/Resolution 59, 191 EX/Decision 11(II)

**Background:** 36 C/Resolution 59 requested the Director-General to initiate an in-depth reflection on evaluating and strengthening the Memory of the World Programme (MoW). The Director-General consequently convened a meeting of experts in May 2012 whose recommendations were submitted to, and adopted by, the Executive Board at its 190th session. After examining the experts' proposals, the Board further requested the Director-General to undertake a preliminary study of the technical, financial and legal aspects on the desirability of a standard-setting instrument on preservation and access to documentary heritage for examination by the 191st session. At its 191st session, the Executive Board recommended that the 37th session of the General Conference decide that the issue of preservation and access to documentary heritage in all its forms be regulated at the international level by means of a Recommendation.

**Purpose:** This document presents the above-mentioned feasibility study, including the relevant decision of the Executive Board, concerning the preservation of, and access to, documentary heritage.

**Decision required:** paragraph 5.

1. The issue of preserving the world's recorded knowledge has been a source of concern to specialists and others familiar with its fragility and the ensuing risks of losing important sources of information. Many groups have urged UNESCO to develop a standard-setting instrument to

provide the basis for the protection of documentary heritage, including in digital form. Protection can be effectively achieved through strategic policies that contribute to enhanced national legislative and implementation frameworks in Member States.

2. At its 190th session, the Executive Board (190 EX/Decision 16) requested the Director-General to undertake and present to it the results of a preliminary study of the various elements to be taken into consideration in developing an instrument to lay the legal basis for the protection of documentary heritage especially in light of the new access dimension has been created. The diversity of preservation and access issues that have arisen would be best served by a standard-setting instrument that aids harmonization of practice.

3. The study, carried out by the Secretariat (see Annex I), took into consideration the findings of experts as well as consultations with members of Memory of the World committees and heritage professionals. It also examined existing instruments in the area of heritage protection in order to determine whether these afforded sufficient protection for documents. It concluded that there was a gap in current instruments which meant that the specific issues that are peculiar to archives, libraries, and digital records in particular, were not fully covered. This was especially true with respect to the continuous technological evolution of modern documentary heritage media and the resulting legal, cultural and social impact on access and preservation of documentary heritage.

4. By its 191 EX/Decision 11 (II) the Executive Board invited the Director-General to submit the preliminary study contained in document 191 EX/11 Part II to the General Conference, at its 37th session, together with the relevant observations and decisions of the Executive Board thereon and recommended that the General Conference decide, at its 37th session, that the question of preservation and access to documentary heritage, including digital heritage, be regulated at the international level by means of a recommendation, subject to the availability of resources.

5. In the light of the foregoing, the General Conference may wish to adopt the following draft resolution.

The General Conference,

1. Having examined document 37 C/48,
2. Recalling 191 EX/Decision 11 (II),
3. Takes note of the findings of the preliminary study of the technical, financial and legal aspects on the desirability of a standard-setting instrument on preservation and access to documentary heritage;
4. Invites the Director-General to submit to it at its 38th session a draft recommendation on preservation and access to document heritage;
5. Appeals to Member States and potential donors for extrabudgetary funding to enable greater in-depth consultations on the elaboration of the proposed Recommendation.

## **ANNEX I**

### **PRELIMINARY STUDY**

#### **INTRODUCTION**

1. As the consequences of wars, natural disasters and technological progress constantly modify the documentary heritage landscape, appropriate protection measures are indispensable to address the many resultant challenges that contribute to dramatic losses of knowledge and identity. It was in an attempt to stem such losses that UNESCO instituted the Memory of the World Programme (MoW) in 1992. In its 20 years of existence, MoW has become the brand for the preservation of documentary heritage, encouraging international cooperation, knowledge-sharing and awareness-raising of the value of documentary heritage in the form of records in print, audiovisual and/or digital formats that are primarily found in archives, libraries, museums and similar institutions.

2. Experts associated with MoW have been increasingly concerned about the fragility of this heritage, expressing the need for its protection through effective policies that contribute to upgrading and enhancing national legislative and implementation strategies in Member States. Protection is even more necessary as cultural exchange and collaboration are now world-wide, transcending national borders and creating an entirely new dimension of access. A normative instrument was assessed as the best mechanism to achieve this desired objective.

3. The tenth meeting of the MoW International Advisory Committee (2011) consequently recommended the establishment of a Working Group to explore alternative legal means to reinforce the Programme. The findings were presented to the Experts' Meeting (Poland, 2012) which urged UNESCO to develop a normative instrument on preservation and access to documentary heritage. The international conference on "The Memory of the World in the Digital Age: Digitization and Preservation" (Canada, 2012) also recommended that UNESCO consider the inclusion of protection of digital heritage in a normative instrument on documentary heritage.

#### **DESIRABILITY OR NECESSITY OF A STANDARD-SETTING INSTRUMENT**

##### **Legal aspects**

4. There is a commonly-held view of many Member States and documentary heritage experts that a UNESCO standard-setting instrument would assist the further development of MoW and, in particular, remove obstacles to the selection, preservation and migration of records at the national level.

5. A key method of reinforcing preservation and defence is to raise general awareness of governments, international organizations, public and private foundations, as well as the public at large, of the need for continuing and sustained support for heritage protection. The MoW International Register was established as a key mechanism to enhance awareness through publicizing the breadth, age and significance of this heritage by listing diverse examples. Some UNESCO programmes, including the World Heritage system and the Intangible Cultural Heritage use Convention-based listing systems to publicize cultural heritage and bolster its protection. Equally, there are other effective UNESCO listing systems such as "Man and Biosphere" which operate without a Convention.

6. While documentary heritage is theoretically protected in international law through the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the ravages of unrest or war in Sarajevo, Baghdad, Cairo and Timbuktu has resulted in serious losses of heritage collections. This seems to call for a major enhancement of protection of documentary heritage.

7. UNESCO implements several Conventions and Recommendations which apply, to some extent, to the items covered by the Memory of the World Programme. They contain important provisions on international collaboration and protective measures which should be enforced by Member States. However, many of the specific issues related to archives, libraries, digital records and other documents are not covered in detail in these existing instruments. Because of the very diverse levels and techniques of preservation and access in Member States, a standard-setting instrument could be an essential aid to harmonization of practice in this particular field and thus encourage access and exchange in accordance with UNESCO's work to foster cultural diversity. Such an instrument would operate as an educational tool heightening public awareness of this heritage and would meet the interests of many Member States by setting out standards for those responsible for preservation and access.

8. Avoidance of duplication at all levels is essential especially given the current financial circumstances. Further coherence of actions can be assured by building synergies between MoW and other heritage programmes. The safeguarding, or even revival, of intangible heritage, such as folk songs, is often dependent on the preservation of physical carriers, such as video and sound recordings, while the objectives and principles of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions are clearly forwarded by the publicity given to MoW items concerning minorities and lesser-known cultures.

9. The detailed experience accumulated by MoW in the last two decades is worthy of an in-depth reference document encapsulating guidelines for professionals in this area. Significant principles concerning documentary, including digital, heritage protection have been developed and this record of knowledge and practice has created a sound basis which can now be distilled in an instrument setting a standard of best practice in this area of UNESCO's mandate, bringing with it the full authority of UNESCO and engaging the responsibility of Member States.

### **Form of the instrument**

10. The study examined which form of standard-setting instrument would achieve the maximum possible protection of vulnerable and endangered documentary heritage. The binding nature of Conventions is often regarded as particularly prestigious, and a Convention could endow MoW with better status, more support from Member States, more financial resources and more staff as well as give UNESCO National Commissions stronger grounds to persuade governments to support the Programme. However, the study found that a well-designed Recommendation would equally increase visibility and heighten awareness of MoW within Member States because of the obligation to bring the Recommendation to the attention of the relevant authorities and to report on the status of its implementation. Non-mandatory instruments (standard-setting Recommendations, Declarations, Charters, etc.), often described as "soft law", have an important role in harmonizing State practice. In view of the needs at the national level, a Recommendation addressed to States seems most appropriate.

11. The three levels of concern for preserving documentary heritage are the physical carriers (manuscripts, stelaes, incunabula, books) whose information goes beyond text and reveals techniques, crafts and their own history; the actual information content which needs protection against loss; digital records of all kinds, whether digitized or "born digital" which are particularly vulnerable. A Recommendation has the flexibility to be rapidly adjusted to meet the constant technological evolution of modern documentary heritage carriers and assist States to achieve best practice in the preservation of, and access to, precious items of national heritage.

### **Financial aspects**

12. Developing and administering a new standard-setting instrument of any kind will require additional funding. Negotiation costs are estimated to be in the range of US \$150,000 for UNESCO, excluding additional costs for Member States' representations. The costs of ongoing administration and monitoring also need to be considered, as well as those related to the

organization of statutory meetings of State Parties and Intergovernmental Committees. While there is no distinction between Recommendations and Conventions in terms of the procedure to be followed for the preparations of drafts, their consideration and adoption by the General Conference, Recommendations do not entail statutory meetings, thus giving UNESCO more flexibility in deciding when meetings should be held and in securing extrabudgetary funds if required.

13. While it would be the intention of the Director-General to meet the costs associated with this exercise from the regular programme, the tight financial situation might necessitate the mobilization of extrabudgetary resources.

#### **Other considerations**

14. The staff resources for the preparation of the many meetings now required by the existing UNESCO Conventions (Secretariat report, translation and interpretation) is another critical factor. Recent practice within UNESCO of requiring a Meeting of States Parties (usually once every two years) and an Intergovernmental Committee meeting once or twice per biennium for a Convention has substantially increased the administrative burden on existing staff. Since the inception of the Memory of the World Programme, staff support has fluctuated between one and two persons who also have had other duties. The amount of productive work done with so little staff is commendable. However, unless further staff resources are supplied it is difficult to see how the additional burden of servicing new bodies can be added to their current duties. The number of monitoring reports and intergovernmental committees is also a considerable burden on least developed countries and small island developing States, making it less likely that they can send relevant experts to each meeting. It seems wise to try to limit the unnecessary use of this complex process and to use less demanding procedures where this is possible.

## ANNEX II

### **191 EX/Decision 11 (II) Preliminary study of the technical, financial and legal aspects on the desirability of a standard-setting instrument on preservation and access to documentary heritage**

The Executive Board,

1. Having examined document 191 EX/11 Part II, presenting a preliminary study on the technical, financial and legal aspects on the desirability of a standard-setting instrument on preservation and access to documentary heritage,
2. Decides to inscribe this item on the provisional agenda of the 37th session of the General Conference;
3. Invites the Director-General to submit the preliminary study contained in document 191 EX/11 Part II to the General Conference, at its 37th session, together with the relevant observations and decisions of the Executive Board thereon;
4. Recommends that the General Conference decide, at its 37th session, that the question of preservation and access to documentary heritage, including digital heritage, be regulated at the international level by means of a recommendation, subject to the availability of resources.