

RESOLUTION No. 4/2006

CULTURAL HERITAGE LAW

The 72nd Conference of the International Law Association, held in Toronto, Canada, 4-8 June 2006:

HAVING CONSIDERED the Report of the International Committee on Cultural Heritage Law and the Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material contained therein and takes note of the commentary;

THANKS the Chairman and the Rapporteur, and the members of the Committee for the work they have done;

RECOGNISING the importance of formulating a set of Principles on this topic;

ADOPTS the Principles as follows:

Preamble

Conscious that cultural material forms a part of the world heritage and should be cherished and preserved for the benefit of all;

Taking into account the significance of cultural material for cultural identity and diversity as well as of territorial affiliation;

Reaffirming the link between culture and sustainable development;

Being aware of the significant moral, legal, and practical issues concerning requests for the international transfer of cultural material;

Convinced of the need for a collaborative approach to requests for transfer of cultural material, in order to establish a more productive relationship between and among parties;

Emphasizing the need for a spirit of partnership among private and public actors through international cooperation;

Also emphasizing the need for a cooperative approach to caring for cultural material;

Expressing the hope that these Principles will provide an incentive for improving collaboration in the mutual protection and transfer of cultural material;

Recognizing as well the need to develop a more collaborative framework for avoiding and settling disputes concerning cultural material;

Building on current practice when articulating the following Principles to facilitate non-confrontational agreements:

1. Definitions

(i) "Requesting party" or "requesting parties" refers to persons; groups of persons; museums and other institutions, however legally constituted; and governments or other public authorities that request the transfer of cultural material.

(ii) "Recipient" or "recipients" refers to states, museums, and other institutions that receive a request for the transfer of cultural material.

2. Requests and Responses to Requests for the Transfer of Cultural Material

(i) A requesting party should make its request in writing, addressed to the recipient, with a detailed description of the material whose transfer is requested, including detailed information and reasons sufficient to substantiate the request.

(ii) A recipient shall respond in good faith and in writing to a request within a reasonable time, either agreeing with it or setting out reasons for disagreement with it and, in any event, proposing a timeframe for implementation or negotiations.

(iii) In the event of disagreement, the requesting party and recipient shall enter into good-faith negotiations concerning the cultural material at issue in accordance with principle 8.

3. Alternatives to the Transfer of Cultural Material

(i) Museums and other institutions shall develop guidelines consistent with those of the International Council of Museums (ICOM) for responding to requests for the transfer of cultural material. These guidelines may include alternatives to outright transfer such as loans, production of copies, and shared management and control.

(ii) Museums and other institutions shall prepare and publish detailed inventories of their collections, with the assistance of ICOM and other sources when they lack sufficient resources of their own to do so.

(iii) Whenever a substantial portion of the collection of a museum or other institution is seldom or never on public display or is otherwise inaccessible, that museum or other institution should agree to lend or otherwise make available cultural material not on display to a requesting party, particularly a party at the place of origin, in the absence of compelling reasons to the contrary.

4. Cultural Material of Indigenous Peoples and Cultural Minorities

Consistent with the rights of indigenous peoples under the *United Nations Draft Declaration on the Rights of Indigenous Peoples* and cultural minorities, recipients recognize an obligation to respond in good faith to a request for the transfer of cultural material originating with indigenous peoples and cultural minorities. This obligation applies even when such a request is not supported by the government of the state in whose territory the indigenous peoples or cultural minorities are principally domiciled or organized.

5. Human Remains

Museums and other institutions possessing human remains affirm their recognition of the sanctity of such material and agree to transfer such material upon request to any requesting party who provides evidence of a close demonstrable affiliation with the remains or, among multiple requesting parties, the closest demonstrable affiliation with the remains.

6. Registers of Cultural Material

(i) All state museums and other institutions that hold or control holdings or collections of cultural material shall take steps to establish inventories and a register of such material. The register may take the form of a database of information that is available to interested parties.

(ii) Museums and other institutions should submit annual reports of the information recorded in these registers for general publication to any national services that are established to manage and protect cultural material.

(iii) A national service responsible for the maintenance of a state register, in a separate section of such register, shall record all inquiries by identifying the name of the party making the inquiry, the cultural material involved, and the response of the museum or institution concerned. Every three years each such national service shall submit up-to-date copies of registered items to the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in order to facilitate accessibility.

(iv) Each register shall be made available to any requesting party that is interested in the transfer of cultural material, so as to help identify the location and provenance of such material and to facilitate claims.

7. Notification of Newly Found Cultural Material

Persons, groups of persons, museums, and other institutions possessing significant, newly-found cultural material should promptly notify appropriate government authorities, communities, and international institutions of their finds, together with as complete as possible a description of the material, including its provenance.

8. Considerations for Negotiations Concerning Requests

Good-faith negotiations concerning requests for transfer of cultural material should consider, *inter alia*, the significance of the requested material for the requesting party, the reunification of dispersed cultural material, accessibility to the cultural material in the requesting state, and protection of the cultural material.

9. Dispute Settlement

If a requesting party and a recipient are unable to reach a mutually satisfactory settlement of a dispute related to a request within a period of four years from the time of the request, upon a request of either party, both parties should submit the dispute to good offices, consultation, mediation, conciliation, *ad hoc* arbitration, or institutional arbitration.

10. Other Rights and Obligations

Nothing in these Principles should be interpreted to affect rights enjoyed by the parties or obligations otherwise binding on them.

RECOMMENDS the adoption of a two-part agenda for work during the next biennium: a study of the concept of safe havens for temporary deposit of cultural material rescued from circumstances of armed conflict and other serious threats; and a study of the relationship between international trade law and cultural heritage law.