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INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION

Fifteenth session

Paris, UNESCO Headquarters, 11-13 May 2009

SECRETARIAT REPORT

INTRODUCTION

The Secretariat reports to the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation at its fifteenth session on activities carried out since the fourteenth session and, in particular, on the follow-up to the recommendations adopted by the Committee.

I. PROMOTION OF BILATERAL RELATIONS (Recommendation Nos. 1, 2 and 3)

1. Three cases are currently pending before the Committee:

- the Parthenon Marbles (Greece, United Kingdom and the British Museum)
- the Boğazköy Sphinx (Turkey, Germany and Berlin Museum)
- the Makonde Mask (United Republic of Tanzania, Switzerland and Barbier-Mueller Museum).

1. The Parthenon Marbles

2. Pursuant to Recommendation No. 1 adopted by the Committee at its fourteenth session (Paris, June 2007), the Director-General has continued to encourage the holding of meetings between Greece and the United Kingdom and to offer UNESCO's assistance. Contacts are being maintained between professionals in the two countries concerned and an informal meeting should be held soon, probably in the presence of a representative of the Secretariat.

2. The Boğazköy Sphinx

3. Pursuant to Recommendation No. 2 adopted by the Committee at its previous session, the Director-General has invited Germany and Turkey to continue the dialogue with a view to achieving a mutually acceptable solution and proposed the assistance of the Secretariat to that end. Messages referring to UNESCO's good offices function in this regard and to the recommendation adopted by the Committee at its fourteenth session were sent to the representatives of Germany and Turkey in early 2009. However, to the knowledge of the Secretariat, no meeting has yet been held between the two parties since the Committee's last session.

3. The Makonde Mask

4. On the initiative of the Republic of Tanzania, a request was submitted to the Committee in 2006 for the return of a ritual mask held in the territory of the Swiss Confederation at the Barbier-Mueller Museum. The standard form for requests for return or restitution was completed by Tanzania and the necessary documentary evidence was provided. The restitution request was transmitted to Switzerland by UNESCO on 31 May 2006 with all the corresponding documents. At the date of issue of this report, the Secretariat had not received a formal reply from the Swiss authorities. Nevertheless, efforts towards discussions are being made by both parties and the Swiss authorities are in regular contact with the owner of the museum where the mask is held.

II. THE UNESCO CULTURAL HERITAGE LAWS DATABASE (Recommendation No. 4)

5. At its twelfth session, the Committee invited the Director-General, UNESCO Member States and Observer States to contribute to the development of the UNESCO cultural heritage laws database. The database was officially launched by the Secretariat in 2005 at the Committee's thirteenth session, owing to \$203,400 in funding from the United States of America.

6. In 2008 and 2009, the United States of America renewed its support for the database development project through funds in trust amounting to \$239,600. These resources serve to finance the implementation of a plan of action for the technical upgrading and promotion of the database (simplification of online procedures for adding files, introduction of ISO codes making it easier to identify countries for cross-searching between different databases and addition of a geographical map).

7. A new presentation brochure is being prepared and partnerships are increasingly being developed with the following international organizations: INTERPOL (establishing and giving access to a database on cultural property stolen in Iraq, compilation of a list of experts in Iraqi cultural heritage), UNIDROIT (cooperation in standard-setting), ICOM (Object-ID record sheets, UNESCO-ICOM Information Centre, museum staff training programmes in Egypt and activities in Africa), the World Customs Organization (UNESCO-WCO project on a model cultural property export certificate), ICOMOS (evaluation of the state of conservation of immovable cultural property) and ICCROM (training).

8. In the light of the ongoing digitization of earlier texts and current laws, the index of all legislation available at UNESCO has been duly modified and updated. To date, 2,117 laws from 163 Member States are accessible on the website <http://www.unesco.org/culture/natlaws>.

9. UNESCO Member States are still strongly encouraged to submit to the Secretariat their national cultural heritage legislation for inclusion in the database. They are requested to provide officially to UNESCO information in electronic format (on diskette, CD-ROM or email), together with an official written authorization from the competent national authority allowing UNESCO to reproduce the legislation and the export/import certificates on its website and to insert a link between the "UNESCO cultural heritage laws database" website and the official national website, unless it is expressly specified that such a link is prohibited or not desired.

III. ATHENS INTERNATIONAL CONFERENCE (17-18 MARCH 2008) ON THE RETURN OF CULTURAL PROPERTY (Recommendation No. 5)

10. On the initiative of Greece, a proposal was made at the fourteenth session of the Committee, unanimously accepted by the 22 States Members of the Committee and recommended to the Director-General of UNESCO, that an international conference should be organized in Athens for lawyers, museum professionals and experts in the field of the return of cultural property. The conference was held with the financial support of Greece on 17 and 18 March 2008 at the New Museum of the Acropolis and formed part of a series of meetings organized by UNESCO and its Member States as forums for discussing the issue of the return of cultural property and providing a

clearer picture of the challenges involved. The conference also offered an opportunity for thinking about ways of enhancing the action of the Intergovernmental Committee.

11. This first international conference was organized by the Greek authorities, who generously welcomed a large number of governmental and non-governmental experts and brought together a panel of high-level professionals who had been involved in discussions leading to the return and restitution of cultural property. The first day was devoted to particular cases of returned property, presented by persons who had been involved (*Successful repatriation of the Axum Obelisk from Italy to Ethiopia; successful repatriation of the Stone Birds of Zimbabwe from Belgium; successful repatriation of Ancestral Remains from the United Kingdom to Australia; successful repatriation of cultural heritage from Denmark to Greenland; and successful repatriation of masks from the United Kingdom to Canada*). On the second day, the discussions took place in four thematic workshops linked to the debate on returns (*Ethical and legal aspects; mediation and cultural diplomacy; museums, sites and cultural context; international cooperation and research*). The proceedings of the conference will be published in English and French in a double issue of *Museum International* and made available to Member States and the public at the Committee's fifteenth session.

IV. EXTRAORDINARY SESSION OF THE COMMITTEE, SEOUL, REPUBLIC OF KOREA, 25-28 NOVEMBER 2008 (Recommendation No. 6)

12. For the first time in its history, and in order to celebrate its 30 years of existence, the Committee held an extraordinary session. This exceptional meeting was held in Seoul from 25 to 28 November 2008 at the invitation of the Government of the Republic of Korea and in pursuance of Recommendation No. 6 adopted at the Committee's fourteenth session. It also provided an opportunity to continue the discussions initiated at UNESCO on the subject of improving the operation of the Committee and its mandate, particularly during the debate on "Memory and universality: new challenges for museums" (5 February 2007) and, above all, the Athens international conference on 17 and 18 March 2008 on "The return of cultural property to its countries of origin".

13. On Wednesday, 26 November 2008, a public meeting of non-governmental experts was held under the auspices of the Republic of Korea. The invited experts engaged in a discussion of the Committee's past and future, marked in particular by a special message from the former Director-General of UNESCO, Mr Amadou-Mahtar M'Bow, who provided the impetus for the establishment of the Committee in 1978.¹ The message was read out to the participants by the Assistant Director-General for Culture, Ms Françoise Rivière. The experts also showed interest in the study of symbolic cases of restitution in the world, whether or not carried out under UNESCO auspices, and to the question of return and restitution from an Asian perspective. The Korean authorities will be issuing a specific publication devoted to the proceedings of this non-governmental expert meeting.²

14. The extraordinary session of the Committee was held on Thursday, 27, and Friday, 28 November 2008. It offered an opportunity to take stock of the Committee's action over 30 years from the point of view of UNESCO and of several independent experts, discuss ways of strengthening its action³ and present the activities carried out by UNESCO's partners (INTERPOL, the Italian national police force and ICOM). An ad hoc Bureau, composed of Professor Lee, representative of the Republic of Korea, elected Chairperson, Mr Hari Pappis (Greece), Rapporteur,⁴ and representatives of Guatemala, Egypt, the Czech Republic and Tanzania as Vice-Chairpersons, was elected for the duration of the extraordinary session. During the two days, Professor Prott presented, on behalf of UNESCO, a compendium on the return of cultural property, which the Culture Sector will present officially at the fifteenth ordinary session of the Committee in

¹ Message available in English, French and Spanish at: http://portal.unesco.org/culture/fr/ev.php-URL_ID=37197&URL_DO=DO_TOPIC&URL_SECTION=201.html.

² The conclusions of the meeting of experts are annexed to this report./

³ See document CLT-2009/CONF.212/COM.15/3, which sets out a draft strategy for the Committee.

⁴ The report of the Rapporteur is annexed to this document.

May 2009. The project was welcomed very warmly, in view of the widely recognized usefulness of such a work for the thinking of the international community. In addition, Ms Elena Korka (Greece) outlined to the participants the results of the March 2008 meeting in Athens.

15. The States Members of the Committee and observers from other States wished that a distinction be made between the two meetings, that of the non-governmental experts on the first day and the extraordinary session on the following two days, and that the resulting conclusions and recommendations be presented separately since they did not have the same legal value. Generally speaking, all participants reaffirmed the importance of the Committee, as a platform for States to exchange experience in fighting trafficking. The State representatives and experts, meeting together, called for the intergovernmental body to play an increasingly international role, having regard to growing world interest in issues relating to trafficking and to the return and restitution of cultural property. With that in view, during discussions on the recommendations of the extraordinary session, the members of the Committee debated at length the proposal by the United States of America that the ordinary sessions of the Committee be held yearly (instead of once every two years, as has been the case since its establishment), drawing on extrabudgetary financing, as UNESCO's regular budget does not for the time being allow such frequent meetings.

16. However, the members of the Committee pointed to the gap between the Committee's original aims (which were to settle cases concerning the return and restitution of displaced property before the entry into force of the Convention in 1970) and its current role, which consisted rather in monitoring the Convention by developing tools to combat trafficking in cultural property, particularly as currently practised. In broad terms, it was recommended that efforts be made to move away from the exclusively intergovernmental framework and to work more closely with the art market, museums, private experts and civil society.

17. Among other highlights of the discussions, the members of the Committee examined the question of updating and promoting the 1999 UNESCO Code of Ethics for Dealers in Cultural Property and the standard form for requests for return or restitution and its possible simplification, as well as various ways of more effectively informing and raising the awareness of States, actors in the art market and the public at large concerning the scourge of trafficking in cultural property. The experts also raised the possibility of a model law for the protection of cultural property or benchmarks in regard to State ownership of such property being drafted by the Committee. The debate on alternative modes of non-judicial settlement of cultural property disputes was also given attention by the participants, who considered that it would be for the Committee to take up that key issue in the future. As to the debate on the international community's growing interest in matters of cultural heritage protection, return and restitution, it highlighted the need to study in greater depth the major international legal and ethical principles underpinning the protection of cultural property. Lastly, in regard to the development of mediation and conciliation functions within the Committee, the experts considered that the adoption of the related draft rules of procedure would be an excellent means of strengthening the intergovernmental body and that the survey conducted by the Secretariat to collect States' comments on the draft would be very useful in that respect (see V below).

18. At the closing meeting of the extraordinary session, the Assistant Director-General for Culture commended the perfect arrangements made for the three days of deliberations by the Korean authorities, who had so generously and efficiently received all of the participants and the Secretariat. The discussions had been held in a constructive and productive atmosphere, had generated considerable interest and realistic thinking on the subject of the Committee and had confirmed its *raison d'être* and the importance of its role in the years ahead. Among the recommendations adopted, the members of the Committee, invited the Director-General, in particular, to include in the agenda of the fifteenth session a strategy for the future work of the Committee and to prepare a working document for that purpose.⁵

⁵ See document CLT-2009/CONF.212/COM.15/3

V. DRAFT RULES OF PROCEDURE ON MEDIATION AND CONCILIATION

19. The General Conference at its 33rd session adopted 33 C/Resolution 44, which added mediation and conciliation to the mandate of the Committee. Draft rules of procedure drawn up by the Secretariat on the basis of Recommendation No. 3 adopted by the Committee at its thirteenth session were submitted to the Committee at its fourteenth session. Two articles out of eleven were considered and amended. A paragraph on the mediation procedure was added to Article 2 in order to provide a list of possible mediators in line with paragraphs 1 and 2 as amended.

20. The Committee decided on a step-by-step approach to consideration of the text with a view to facilitating the work at the fifteenth session and ensuring the adoption of a satisfactory text. An amended version of the draft rules was circulated to the members of the Committee and to all of the other States and observers for comment. A summary of the comments and amendments received and a consolidated draft were prepared accordingly by the Secretariat.⁶ The consolidated draft is again transmitted to the members of the Committee and to other States and observers together with this report. It will be submitted for consideration to the members of the Committee at the Committee's fifteenth session and, if need be, to a working group.

VI. DECLARATION OF PRINCIPLES CONCERNING CULTURAL OBJECTS DISPLACED IN CONNECTION WITH THE SECOND WORLD WAR

21. Three sessions of the intergovernmental meeting of experts have been held so far (July 2006, March 2007 and March 2009). The preparation of the draft declaration was launched following the adoption of 33 C/Resolution 45, which stipulated, in particular:

- that the subject of cultural objects displaced in connection with the Second World War should be the subject of a standard-setting instrument; and
- that the form of this instrument should be a non-binding "Declaration of Principles".

22. The main results of the July 2006 session consisted essentially in the disappearance, where appropriate, of prescriptive formulations ("shall" in English; "eternal" present tense in French) and the suppression of the principle of compensation for war damage. Owing to the lack of time, the preamble was not studied and two draft principles were left in square brackets. The March 2007 session, at which the final draft of the draft principles was prepared, focused on the preamble and the two draft principles left in square brackets. On that occasion, the experts decided not to retain Principle XII concerning lost or destroyed cultural property. The draft Declaration was adopted by vote, with 28 Member States voting in favour, three against and two abstaining. Lastly, at the third session, in March 2009, some amendments proposed by Japan (during the meeting, that State withdrew other proposals on which the members could not agree) were adopted by consensus. However, no consensus was achieved among all the participants on the entire text, in particular on Principle XI on the exclusion of war damage. The draft declaration resulting from the work of that meeting was submitted to the Executive Board at its 181st session, which will make a recommendation thereon to the General Conference.

VII. THE FUND OF THE INTERGOVERNMENTAL COMMITTEE

23. The Fund of the Committee was established in November 1999 in Resolution 27 adopted by the General Conference of UNESCO at its 30th session, pursuant to Recommendation No. 6 adopted the same year by the Committee at its tenth session. The purpose of the Fund is to support Member States' efforts to combat effectively trafficking in their cultural property, particularly with regard to the verification of cultural objects by experts, their transport, insurance costs, establishment of facilities for displaying them in good conditions and the training of museum

⁶ See document CLT-2009/CONF.212/COM.15/1

professionals in the countries of origin of cultural property. To date, thanks to donations from Greece, the amount available in the Fund stands at some €60,000.

VIII. INTERNATIONAL COOPERATION

New States Parties to the 1970 UNESCO Convention and to the 1995 UNIDROIT Convention

24. Since the last session of the Committee, four States have become parties to the 1970 UNESCO Convention (Chad, Germany, Montenegro and Republic of Moldova), bringing the total number of States Parties to 116. Two other European States, major actors in the art market, are studying the possibility of ratifying this instrument. The 1995 UNIDROIT Convention currently has 29 States Parties since ratification by Greece in 2008.

UNESCO-WCO Model Export Certificate for Cultural Objects

25. Developed jointly by the UNESCO and World Customs Organization (WCO) Secretariats, the Model Export Certificate⁷ is a tool for combating trafficking in cultural property. Both organizations recommend that their Member States consider adopting it as an international standard, stressing its considerable advantages in that it is specially adapted to the growing phenomenon of the cross-border flow of cultural objects and is useful to Member States, their police and their customs officers by enabling them to combat trafficking in cultural property more effectively.

26. In late 2007, the respective UNESCO and WCO Secretariats requested their Member States to complete a questionnaire designed to evaluate the usefulness and effectiveness of the certificate in order to improve the assistance provided to national authorities in the adoption and implementation of this tool and, if need be, to adapt it further to the needs of States. In early 2008, UNESCO and WCO received replies from 42 States and from the European Union. These contributions were set out in consolidated form in a report addressed to States and partners of UNESCO and WCO together with a letter from the Director-General of UNESCO and the Secretary-General of WCO.

Cooperation with INTERPOL, UNIDROIT and the International Council of Museums

27. UNESCO continues to maintain fruitful cooperation with INTERPOL, UNIDROIT, the World Customs Organization and the International Council of Museums (ICOM) in combating trafficking and in developing and implementing tools that facilitate the return and restitution of cultural property. Each of these organizations regularly invites experts and representatives of the other organizations to participate in its meetings, thus contributing to the consolidation of common groundwork and to information exchange on trafficking and restitution.

28. UNESCO participated in the fifth and sixth meetings of the INTERPOL International Expert Group in Lyon (2008) and at UNESCO Headquarters (2009). Among the recommendations adopted, the experts encouraged the use of tools such as the UNESCO-WCO Model Export Certificate for Cultural Objects and the laws database and supported UNESCO initiatives to raise public awareness of the protection of this heritage and to assist its Member States in introducing similar initiatives at the national level, in particular for children (see below, “Training workshops and awareness-raising campaign”). The experts also wished to recommend that national authorities continue their action against trafficking in cultural property through the Internet and conclude special cooperation agreements with the main virtual auction sites. Lastly, emphasizing the crucial role of art market professionals in combating trafficking in cultural property, UNESCO and ICOM were encouraged to strengthen links with the main actors in the art trade. UNESCO has accordingly established professional contacts with the *Syndicat national des antiquaires* (France) and Christie’s (United Kingdom).

⁷ Available in six languages at : http://portal.unesco.org/culture/fr/ev.php-URL_ID=36318&URL_DO=DO_TOPIC&URL_SECTION=201.html

Training workshops and awareness-raising campaign

29. An information and training workshop on action to combat trafficking in cultural property in the Andean countries was held in Quito (Ecuador) from 17 to 20 September 2008. Moreover, the UNESCO Office in Baghdad and the Museums and Cultural Objects Section jointly organized, in June 2007 and November 2008, two training seminars on combating trafficking in cultural property for Iraq and its bordering countries (Palestine, Jordan, Libya and Syria). The second part of this training course was designed more specifically for Iraqi lawyers, museum specialists, civil servants and police officers. This “tailor-made” training was provided owing to financing from the Czech Republic. The next training activities will be organized in partnership with the *Carabinieri* (national police of Italy) and with the support of the Italian cooperation authority for the African countries in June 2009 and, in the second half of 2009, for Central American and the Caribbean States. In the latter case, the workshop will be concerned more particularly with combating and preventing thefts of cultural objects of religious origin and has financial support from the United States of America. Furthermore, Monaco is contributing to the establishment of a biennial training and prevention project on trafficking in cultural property in Mongolia. Lastly, owing to financing from the Czech Republic, workshops and materials for promoting the Iraqi heritage among children will be developed in 2009-2010 in cooperation with the UNESCO Office in Baghdad.

30. In May 2008, the Director-General sent a letter to Member States of the Organization, observers, Associate States, IGOs, NGOs and major actors in the art market alerting them to the severity of the problem of trafficking in cultural property worldwide, particularly from the Mesopotamian region. In this connection, UNESCO is currently developing, with financing from the United States of America, soon to be supplemented by financial support from Switzerland, an audiovisual awareness-raising campaign in the form of a 20-minute film and a series of 2-3 mini video clips. With this in view, UNESCO is seeking technical and financial support from airline companies, tour operators, international airports and others.

31. On the occasion of the Committee’s thirtieth anniversary, UNESCO is completing, under the supervision of Professor Prott and with financial support from the Republic of Korea, the preparation of a compendium of historical, philosophical and legal texts on the subject of the return of cultural property. This work, intended for the public at large, but also for students, specialists and decision-makers, will compile a selection of significant writings published by key authors and institutions from the late eighteenth century to the present day in order to shed light on the contemporary debate on issues relating to world flows of cultural property and the challenges posed by its restitution. Initially issued in English, this book will also be translated into French and Korean. Greece has already contributed €10,000 for the publication of the French version.

United Nations

32. The Director-General of UNESCO, in his letter of May 2008, again drew the international community’s attention to resolution 1483 adopted by the United Nations Security Council on 22 May 2003. That resolution requested States Members of the United Nations to “take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed”. The resolution also called upon UNESCO, INTERPOL and other competent international organizations to assist in the fulfilment of this obligation.

33. Following the adoption by ECOSOC of resolution 23, in July 2008, UNESCO responded favourably to ECOSOC’s invitation, which encouraged the United Nations Office on Drugs and Crime (UNDOC), in close cooperation with the Organization, to organize an intergovernmental expert group in order to make recommendations on protection against trafficking in cultural property for submission to the Commission on Crime Prevention and Criminal Justice at its eighteenth session. UNESCO is ready to continue to work on the topic of organized crime in the area of trafficking but suggests that UNDOC representatives be also associated with work conducted by UNESCO with its partners and through the Committee.

ANNEX I

EXAMPLES OF CULTURAL PROPERTY RETURNED OR RESTITUTED WITHOUT THE COMMITTEE'S INVOLVEMENT

1. The role of the *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation* is to seek ways and means of facilitating bilateral negotiations for the restitution or return of cultural property.

2. To assist it in its task and pursuant to Recommendation No. 3 adopted at its twelfth session, a list of recent examples of returns and restitutions achieved as a result of legal proceedings, bilateral negotiations, a voluntary gesture by the holder of the cultural property or other solutions such as exchanges, loans or the making of replicas are listed below as a source of inspiration for the Committee.

- In June 2007, Switzerland returned to Greece an antique marble sculpture representing a torso, originating from Gortyn and stolen in 1991. This object was on the INTERPOL list of stolen works of art.
- In June 2007, two wooden statues (known as vigango) were restored by the United States to the Kenyan village where they had been stolen in 1985.
- In December 2007, a number of major American museums (Getty, Museum of Fine Arts in Boston, Princeton, the Metropolitan Museum and the Royal Athena Galleries in New York) returned to Italy some 68 pieces from the “Nostoi” collection, which had been on display in a travelling exhibition.

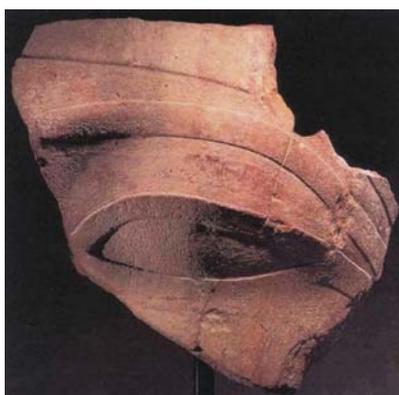


- In January 2008, the Metropolitan Museum of Art in New York returned to Italy a 2,500-year-old vase (the *Euphronios Krater*), considered to be one of the finest in the world.



- In April 2008, 156 cultural relics illegally exported to Denmark were sent back to China following a request for their return lodged by China in the Danish local court.

- In April 2008, Syria returned to Iraq some 700 ancient artefacts, including gold coins and jewellery, which had been stolen in the aftermath of the United States intervention in Iraq.
- In April 2008, 262 archaeological items seized by the French customs authorities were returned by France to Burkina Faso. The items (pottery shards, complete potteries, stone and bronze objects) date from 1,000 BC to 1,300 BC.
- In September 2008, Italy returned to Greece a fragment of the Parthenon frieze representing the foot of the ancient goddess Artemis. Athens had for 13 years been seeking the return of this 35 cm-high 34 cm-wide marble artefact held by the Palermo Museum.
- In October 2008, the Basel Antikenmuseum returned to Egypt (by way of a donation) an eye originally belonging to a statue of Amenhotep III.



- In November 2008, the Vatican Museum returned to Greece a fragment of the northern frieze of the Parthenon, claimed by Athens for 18 years. The piece represents a young man's head.
- In January 2009, the Italian authorities returned to Bulgaria some 3,000 archaeological items from the Roman and Byzantine period which had been taken during illicit excavations in Bulgaria and transported illegally to Italy. The items include statuettes that will further enhance the National History Museum collection in Sofia.
- In January 2009, the Peruvian Government returned to the Iraqi Government three tablets of Mesopotamian origin inscribed with cuneiform writing which had been seized in February 2008 at Lima airport. Two of the three items are said to date from the second millennium BC and the third from the first millennium BC. Other Iraqi antiquities were also seized in Lebanon in October 2008 and appraised by INTERPOL officers who took part in the training workshop organized by UNESCO for Iraqi participants.
- In February 2009, Switzerland handed over to Lebanon a marble head stolen in Lebanon in 1981. The head represents a young Greek male and dates from the third century BC.



- In March 2009, France returned to Israel a batch of about 40 ancient watches recovered through the efforts of the *Office Central de Lutte contre le Trafic des Biens Culturels* (OCBC), worth \$10 million and stolen from the Museum of Islamic Arts in Jerusalem in 1983.



- In March 2009, Greece returned to Italy, through the Italian national police, two 18th-century mural frescoes that had been removed in 1982 from the church of Grotta delle Fornelle in Caserta (Italy) then found again on the island of Schinoussa (Cyclades) by the Greek authorities in early 2006 during a vast police operation against antiquities smuggling.



- In March 2009, the Netherlands agreed to return to Ghana the head of King Badu Bonsu II, probably executed by the Dutch troops in the 1830s. The authorities of the two countries are holding negotiations in order to make the best possible arrangements for returning the head to the community of origin for burial with all due honours.

ANNEX II

Conclusions of the Non-Governmental Expert Meeting on the occasion of the commemoration of the 30th anniversary of the establishment of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation in Seoul, 26 November 2008.

The meeting heard statements by nine speakers and comments by six discussants, which included analyses of matters that had been raised in the Committee but not pursued. They included studies on the principles of cultural heritage protection that could be gleaned from the many legal instruments currently available, the compilation of information on the education of local populations and other interested groups and statistics on the legal and illegal trade in cultural property, the use of duplicates, progress in compiling national inventories, and the implications of exemptions for donations of cultural objects to museums and their possible links to the illegal trade. Other proposals included instituting a model law on State ownership of antiquities and encouraging civil society groups to campaign for the protection and return of cultural heritage.

The experts also discussed particular conclusions, which are attached hereto. In discussing these conclusions, the experts decided that the following points should be clarified in this accompanying document:

1. the reference to “current discussions on the return of cultural property displaced in connection with the Second World War” was intended to cover national efforts on spoliation issues as well as international initiatives such as the Washington Principles, Vilnius Declaration and discussions within UNESCO and the Council of Europe;
2. the time frame of the conclusions is not restricted to the 30 years of the existence of the Intergovernmental Committee but extends more widely over the entire period concerned by the issue of return;
3. “amicable means”, mentioned in Article 5(c), includes all non-adversarial means of dispute resolution;
4. the experts also considered a provision that would state that the “integrity of collections” argument should not bar the return of a requested object but, while recognizing the importance of this principle, they considered that it was too specific to form part of the conclusions.

The conclusions and the foregoing related explanations may be of interest to the Intergovernmental Committee at its extraordinary session in Seoul on 27 and 28 November 2008.

Lyndel V. Prott
Chairperson of the closing meeting of the Non-Governmental Expert Meeting

Conclusions of the Non-Governmental Expert Meeting

We, the participants in the expert meeting held in commemoration of the 30th anniversary of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (hereinafter referred to as the Committee) in Seoul on 26 November 2008,

Bearing in mind that the illicit removal of cultural heritage or its displacement during or in connection with armed conflict, colonial rule or occupation has resulted in the impoverishment of cultural heritage and has hampered cultural development and cooperation,

Recalling the Plea for the Return of an Irreplaceable Cultural Heritage To Those Who Created it (1978) launched by the former Director-General of UNESCO, Mr Amadou-Mahtar M'Bow,

Bearing in mind all relevant United Nations and UNESCO resolutions including United Nations General Assembly resolution 3187 on "Restitution of Works of Art to Countries Victims of Expropriation" (1973),

Mindful of all relevant international and regional human rights instruments,

Noting that the development and codification of relevant international law, such as the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 and its two Protocols (1954 and 1999), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), the Convention on the Protection of Underwater Cultural Heritage (2001) and regional initiatives have contributed to the recent rise in the return or restitution of cultural heritage items,

Noting current discussions on the return of cultural property displaced in connection with the Second World War,

Have concluded as follows:

1. It is an indissociable attribute of the sovereignty of every people that it should have access to, and enjoyment of, the irreplaceable symbols of its heritage;
2. The return of displaced cultural heritage constitutes a fundamental means of restoring and reconstructing a people's heritage and identity and creates dialogue among civilizations in an atmosphere of mutual respect;
3. It is the responsibility of every State to make the best possible endeavours to resolve issues relating to displaced cultural heritage;
4. It is not appropriate to apply the same exacting standards of proof in respect of heritage displaced during armed conflict, colonial rule, occupation of illicit activity as might be required in other cases;
5. States are encouraged to:
 - (a) become parties to the relevant international conventions, adopt appropriate implementing legislation, ensure its effective application, and publicize the legislative, judicial, and administrative measures taken by them;
 - (b) take notice of other relevant international normative instruments such as recommendations, declarations and resolutions;
 - (c) make best endeavours to resolve disputes on the return or restitution of cultural heritage by amicable means;

- (d) publish a list of and provide information about displaced cultural heritage held in their territory and notify those nations and communities to which they have reason to believe that the heritage in question is of interest; and
- (e) contribute, in order to promote the activities of the Committee, to the International Fund of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation.

We further encourage:

6. Cultural institutions such as museums, libraries, archives and other relevant institutions to hold consultations in good faith on requests for the return or restitution of cultural heritage and to take account of codes of ethics and other standard-setting instruments.

ANNEXE III

United Nations Educational Scientific and Cultural Organization

Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation

Extraordinary Session

27-28 November 2008, Korea, Seoul

Report by the Rapporteur of the meeting in collaboration with the Secretariat⁸

The first extraordinary meeting of the ICPRCP Committee took place in Seoul between the 27th and the 28th of November 2008 generously hosted by the authorities of the Republic of Korea. Its purpose was to reflect on the work achieved during the previous 30 years of its existence and to envisage new prospects on how to strengthen the Committee. A Bureau was specially elected for this extraordinary session, composed of Professor Keun-Gwan Lee (Republic of Korea) as Chairman, Mr. Hari Pappis (Greece), as Rapporteur and Guatemala, Egypt, Czech Republic and Tanzania as vice-Presidents. The organization of the work was divided in four sessions.

The first session had as its subject reflections on the work achieved during its 30 years of activities.

Mr M. Bouchenaki, Director General of ICCROM and former UNESCO Assistant Director General for Culture, depicted the historical background for building the mentality against illicit trafficking in the international community and the process to establish the relevant institutions. The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of origin or its Restitution in case of Illicit Appropriation (hereinafter, "ICPRCP") was established by the General Conference of UNESCO in 1978. The ICPRCP promotes cooperation and dialogue with regard to the return of cultural property. It is a forum for negotiations in view to find a resolution of disputes. However, the Committee serves only as an advisory (and not a judicial) body.

According to Mr. Bouchenaki, the ICPRCP operated, in its 30 years, at three levels: legislative, awareness raising and information diffusion. It mainly functioned as a mechanism to encourage the development of national inventories and operational structures. It also promoted the establishment of specialized administrative bodies, mainly by creating particular units within the state police forces. Finally it enhanced, bilateral agreements and international cooperation among different actors. Cases such as the Parthenon Marbles and the Bogazkoy Sphinx are some widely known examples brought to the attention of the ICPRCP.

As a final remark, Mr Bouchenaki, stressed that at one of its sessions, the Committee did not accept the suggestion that a system of compensation could replace the principle of return or restitution of cultural property in certain specific cases, where the latter were not possible. While two states involved in a negotiation could adopt compensation, as a possible solution, the principle of return or restitution should be the main line of action for the ICPRCP. Moreover, the latter should avoid any action, which might be liable to undermine that principle.

⁸ A summary report of the Secretariat is also included in the Report of the Secretariat to the 15th Session of the Committee.

Professor T. Kono, of Kyushu University, Japan examined the efforts made in the four fields of activity of the Committee, namely promotion of bilateral negotiations, international cooperation, illicit traffic and public information. In the previous years these included technical assistance for developing countries, development of infrastructure, such as inventories, reports on situations in member states and reports in negotiations and returns outside the Committee's activities. He then made the hypothesis whether the Committee now turns into a dispute settlement body mainly through the preparation of the rules of procedure for the new capacity, mediation and conciliation, entrusted to it by Resolution 38 of the 32nd UNESCO General Conference (2003).

Prof. Kono argued that the Committee does not have a clear subject matter jurisdiction since it does not deal with a specific type of cultural property or human conduct (theft, illegal excavation or export). He then examined the case of the World Intellectual Property Organization's Arbitration and Mediation Centre to compare it with his hypothesis of the Committee's possible evolution to a dispute settlement body. His conclusions were that the Committee's documents lack of a clear definition on mediation and conciliation. They also include as mediators, persons who are previously involved in the political process of the Committee thus turning it into a dispute settlement body rather than a clearing-house. He finally pointed to two problems for this path: the cost of mediation and conciliation process and the issue of confidentiality.

During the discussion which followed, Italy expressed its reluctance to follow the WIPO model of arbitration and conciliation. In the same line of thought, the representative of the United States of America remarked that confidentiality in the WIPO model is in contrast with the principle of transparency in the Committee. However, he concluded we should move forward with caution. Prof. Marc-André Renold suggested that in order to resolve the problem of contradiction between confidentiality and transparency, the process of mediation within the framework of the ICPRCP could be confidential but its outcome not. Canada as an Observer suggested that another idea could be for member – states to submit a list of mediators from which, to mutually agree on a person or agency.

Egypt suggested that there should be an addition to the Codes of Ethics concerning the time ceiling of announcing the cultural items in auctions early enough for the competent state authorities to be able to examine whether they have been stolen or illicitly removed from their place of origin.

The second session of the Committee started with Professor Jorge Sanchez Cordero of the Centro Mexicano de Derecho Uniforme, Mexico. He first stressed how important it is not to deprive cultural objects from their context in order not to devalue both the object itself and the site where it was located. Negligence or natural causes for destruction should not be arguments in favour of removing cultural objects.

He then developed the idea of a *jus commune* according to which, there is a common orientation among some states in a region, which concerns strict protection of a certain category of cultural objects based on the legal formula of public domain. This renders the objects subjects to the regime of *res extra commercium* with the legal effects of inalienability and imprescriptibility. A second trend in the framework of *jus commune* is some agreements of cooperation and restitution of cultural objects, which alter the *droit commun* of the countries involved since they do not require compensation.

However, there are some hindrances in applying such a legal option. Such a clear case is that of cultural objects belonging to people who migrated from the territory of one state to that of another. Professor Cordero proposed the concept of "best cultural interest" as a means to resolve such difficulties. He defined this concept according to a decision by a US court, which stated that the cultural objects in question "should be returned to their homeland and their rightful owner".

Prof. Cordero then proposed the implementation of a "model law" which could function as a common ground for states of a geographical region to apply the same legal provisions in the same cases. In that way, courts will have less trouble deciding which country's legal system to apply:

either the one of the cultural object's country of origin or the one of the country in which the object was illicitly transferred.

During the discussion, which followed, Professor N. Palmer agreed with that last argument. Prof. P. O'Keefe, however, questioned the applicability of a model law since it requires states to implement it while there is no way to ensure that this will actually take place. Prof. Scovazzi wondered what would be the benefits of a model law were there to be variations in its specific implementation from state to state. Egypt was in agreement with Australia and Italy. The representative of the United States of America suggested as another option mutual treaties of assistance.

Mrs Elena Korka, Director of Prehistoric and Classical Antiquities presented the outcomes of the Athens International Conference on the Return of Cultural Property to its Country of Origin (Athens, March 2008). Based on six successful cases of return of cultural property presented there, she highlighted the special importance and exceptional value attributed to the cultural property by the community or society in which it was created. She also pointed to the added value ensuing from returning cultural property as a result of the enhancement of its intangible heritage. Furthermore, she reminded the mediating role of the ICPRCP; the new trends in the framework of the 1970 Convention including long term or renewable loans and agreements such as reciprocal exchange of cultural objects and the necessity not only for new codes of ethics but for revision of national and international legislation as well.

She stressed that according to the Athens Conference conclusions, cultural heritage constitutes an inalienable part of a people's sense of self and of community. Functioning as a link between the past, the present and the future; certain categories of cultural property are irrevocably identified by reference to the cultural context in which they were created. Moreover, it is their original context that gives them their authenticity and unique value. The role of the ICPRCP as agreed in Athens must be strengthened and mediation should be encouraged either through the Committee or by other means of alternative dispute resolution. Museums should abide by codes of ethics. Requests and negotiations for the return of cultural goods can work as a vehicle for cooperation, collaboration, sharing, joint research and economic promotion according to the clear tendency developed in recent years towards the return of cultural objects to their countries of origin based on legal, social and ethical grounds. The return of cultural objects is directly linked to human rights (preservation of cultural identity and preservation of world heritage).

Prof. Lyndel Prott, Honorary Professor at the University of Queensland and former Director of Cultural Heritage at UNESCO presented the compendium currently being prepared for UNESCO on the Issues of Return and Restitution. This book examines the philosophical approaches to return and restitution either as amends to wrongdoing or as a cosmopolitan view of accepting other states to enjoy the cultural objects of a foreign culture. It also looks with an empirical method at cases of repatriation as well as their legal framework. Its aim is to stimulate further discussion on the function of the Committee and to provide an inclusive presentation and examination of methods of return.

The third session of the Committee examined the new perspectives and prospects, particularly on how to strengthen the Committee. Prof. Ana Filipa Vrdoljak from the University of Western Australia stressed the pivotal role of the international legal framework for the subject of return and restitution particularly in the framework of post world war atmosphere of self - determination and human rights in the field of cultural development. Her recommendations included that the ICPRCP continues to pursue its twin purposes of protection of cultural heritage and peaceful settlement of disputes while its role should be strengthened. More particularly, the protection of cultural heritage could be promoted by strengthening the linkages of the Committee with the international law, resorting to mechanisms of conflict resolution and affirming human rights in the framework of UNESCO.

Other suggestions included the networking of this Committee with other ones with similar competence and the formulation of operational guidelines to provide transparency and uniformity at

its work. The role of the NGOs should be kept in mind, especially ICOM and ICCROM, the need for inventories was stressed as well as the collection of data for successful cases of return. Finally, the Fund of the Committee needs to be utilized. The second purpose of the Committee, namely the peaceful settlement of disputes should include judicial settlement, codification of cases of claims for return, utilization of alternative methods of dispute resolution and use of arbitration at the international and regional level.

Prof. Scovazzi from the Italian Delegation suggested that in the field of cultural property, states parties to the 1970 Convention could consider the idea of an international law with some properties of *jus specialis*, that is, for them to implement it in cases where national legislation is not sufficient. Prof. Lyndel Prott mentioned the case of a state party to the 1970 Convention, which does not implement it because it has not yet integrated it into its national legislation.

Mr Kiprop Lagat, Assistant Director of the National Museum of Kenya examined the possibility that new forms of cooperation and dialogue with countries of the north could have a complementary function to the core issue of return and restitution. However, he stressed the fact that these are not a substitute for the central issue of claims for repatriation of cultural objects. He mentioned partnership programs of training, research, exchanges, technical support, the creation of on line databases to facilitate access and loans from European museums of their African collections to museums in Africa. During the discussion which followed, Professor N. Palmer reminded the case of a loan which evolved into a permanent one, thus pointing to one way of returning the cultural object.

Professor Marc-André Renold of the University of Geneva and Co-Director of the Art-Law Centre presented a repertoire of alternative methods of dispute resolution. Apart from the ones of arbitration, negotiation and mediation and conciliation, others include restitution (unconditional or conditional), loans, donations, the setting up of a specific ownership status, the making of copies, the formal recognition of the significance of the object for some people's cultural identity and cultural cooperation agreements. He also mentioned other possibilities such as the transfer of ownership to a third party, financial indemnification for withdrawing the claim, the purchase of the object by the state which makes the claim and the repurchase of the object by the person / institution making the restitution claim. He also suggested the establishment of a neutral and specialised forum according to the model of the WIPO Arbitration and Mediation Centre.

At the discussion which followed, Tanzania pointed out that inventories of stolen or removed cultural objects are necessary because people, particularly in Africa, do not know what they should consider claiming to have it returned. The Czech Republic and Greece expressed some reluctance for the option of producing a copy as a method of dispute resolution.

Professor Lyndel Prott, pointed to the renewed interest on the subject of repatriation during the last decade with various meetings taking place. A Fund has been established to assist poorer states. She remarked that efforts should be made to bring more states closer to the Committee in order to utilize it and submit claims to it. She added the importance of getting the individuals involved apart from member states. Furthermore, she commented that the issue of cultural rights will gain ground in the future and perhaps the Committee should deal with it. She finally opted for a multicultural dialogue without bitterness.

Professor N. Palmer discussed mediation and other forms of alternative dispute resolution in order to enhance the flexibility of mechanisms to achieve results in return of cultural property. He pointed to the fact that a current trend in courts seems to be taking place acknowledging the sovereign right of nations to principal antiquities or cultural property, which are part of the cultural identity of these nations. Regarding this, he analyzed the *lex situs* rule according to which a national law can be the closest source to find the right of possession of a cultural property. Furthermore, he observed that there is a growing tendency nowadays to accept the moral title over the acclaimed cultural property. Restitution for wrongs, he concluded, should be consistent both in cases of restitution of old wrongdoings and current illicit trafficking. Equally important is for agencies and institutions, even museums, to be pro-active in addressing wrongdoings both ancient

and current. There is finally, a vital need for a common language between parties involved in order to achieve amicable resolution.

During **the fourth session** of the Committee, Professor Dr. Choi Seok – yeong of the University of Korea, made the suggestion that states where cultural objects were initially created (countries of origin) and states which possess these items now (countries in possession) should take on cooperation schemes among themselves. Thus, they could arrive at specific ways to return cultural property by avoiding disagreements at the international level. Concerning the museums in particular, he suggested that the ones of the countries of origin could cooperate with the ones from the countries in possession to inventorying the objects of their cultural property. He further suggested that state agencies from both countries of origin and the ones in possession could cooperate at preserving and managing cultural assets.

Officer Karl Heinz Kind of the Interpol General Secretariat stressed the need to promote cooperation both at the international level among state agencies and at the national level among various agencies with complementary competences. He suggested the need to develop legislation for the effective protection of cultural property, to adopt the existing international instruments, to establish and continuously update inventories for collections with their necessary update, to create databases on stolen cultural property, to ensure fast sharing of information concerning it and finally, to induce joint training programmes of police, customs and museum personnel.

Captain Giuseppe Marseglia of the Italian Carabinieri TCP presented his agency as an example of a police force specialized in illicit traffic of cultural property with a lot of experience and tools already developed to offer.

The Recommendation adopted by the Committee stems from the interventions and the discussions, which took place at this meeting and provides new orientation concerning the future of its work. First, it stresses the need to establish the rules of procedure for mediation and conciliation. Secondly, the members of the Committee believe that innovative ways to raise awareness, capacity building for developing countries and creating inventories of cultural objects as well as databases concerning successful cases of return or restitution of cultural property are necessary means to facilitate its work. Thirdly, it would be useful if more states could become parties to the relevant international instruments, submit to the ICPRCP more claims of return of cultural property and contribute to the International Fund. As a next step, the Committee invites the Director General to prepare a document to be submitted to the next ordinary session of the Committee regarding the strategy of the future work of the Committee, based on the discussions and the suggestions of this extraordinary meeting at Seoul.

The Recommendation was adopted by consensus subject to the reservation expressed by the Japanese delegation concerning the mentioning of the Athens International Conference and the Seoul Meeting in the preamble of the Recommendation. The text of the Recommendation reads as follows.

Recommendations

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP), hereinafter mentioned as “the Committee”,

Expressing its appreciation to the Korean authorities for organizing this Extraordinary Session of the Committee commemorating its 30th anniversary;

Welcoming a recent increase in the number of returns of cultural property to its countries of origin, and acknowledging a rise in awareness of the general public, researchers and institutions, in the

return of cultural property to its countries of origin or its restitution in case of illicit appropriation as well as the fight against illicit traffic;

Recognizing that in its 30 years of existence, the Committee has made substantial achievements in the raising of awareness concerning the return of cultural property to its countries of origin or its restitution in case of illicit appropriation and concerning the fight against illicit traffic;

Mindful of the need to further strengthen the role of the Committee as a facilitator for the return of cultural property to its countries of origin or its restitution in case of illicit appropriation, including through bilateral negotiations;

Taking note of the discussions and the Conclusions of the Athens International Conference on the Return of Cultural Objects to their Countries of Origin (March 2008) and of the meeting of the non-governmental experts held in Seoul in November 2008;

Reaffirms that certain categories of cultural property fully reveal their authenticity and unique value only in the cultural context in which they were created,

Encourages the States concerned to continue and intensify their efforts with a view to resolving disputes on the return of cultural property or restitution in case of illicit appropriation, by amicable means through bilateral negotiations complemented by other means, such as mediation and conciliation, bearing in mind that in many cases this may involve non-state actors;

Encourages international cooperation with a view to assisting developing countries in building their capacity to facilitate restitution of their cultural property;

Encourages States through international cooperation to develop inventories of their cultural property wherever located and to make better use of existing databases of stolen works of art;

Suggests collecting information on successful restitutions and setting up a database thereon;

Invites States to consider becoming parties to the international instruments relating to the return of cultural property to its countries of origin or return in case of illicit appropriation and the fight against illicit traffic;

Invites States to consider a more active use of the Committee;

Considers that adoption of rules of procedure on mediation and conciliation will be a significant step to strengthen the role of the Committee;

Urges the development of innovative ways to raise awareness for the return of cultural property to its countries of origin or restitution in case of illicit appropriation, and the fight against illicit trafficking;

Suggests that the International Code of Ethics for Dealers in Cultural Property be amended and considers that further efforts should be made to encourage the art market to respect it;

Encourages contributions to the International Fund for the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation;

Invites the Director-General to include an item in the agenda of the Committee's 15th Ordinary Session concerning a strategy for the future work of the Committee, within the framework of its mandate, and to prepare a document to that end.