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Report

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**REPORT ON THE 2008-2009 ACTIVITIES AND THE FIFTEENTH 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**

OUTLINE

Source: Article 4.8 of the Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.

Background: The Committee has met twice since the 35th session of the General Conference: at an extraordinary session on the occasion of its 30th anniversary in Seoul, from 25 to 28 November 2008, and at its fifteenth session, in Paris, from 11 to 13 May 2009.

Purpose: This document contains the final report of the Committee on its fifteenth session and the recommendations adopted by it on that occasion. The report gives an overview of the activities undertaken by UNESCO Member States, the Secretariat and other international governmental or non-governmental organizations aimed at curbing illicit trafficking in cultural property, in particular by administrative and legal means, and at facilitating return of such property. It also presents the Committee's views on the adoption of the draft rules of procedure on mediation and conciliation and on the possible options for the development of its activities in the future.

I. Introduction

1. The fifteenth 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 (hereafter “the Committee”) was held at UNESCO Headquarters in Paris from 11 to 13 May 2009. Twenty-one of the twenty-two Committee Members were represented. Forty UNESCO Member States that are not members of the Committee were also registered as observers, as were two Permanent Observer Missions, four intergovernmental organizations, one non-governmental organization, fifteen experts and three representatives of the press.

II. Opening of the session – election of the Bureau – adoption of the agenda

2. The Assistant Director-General for Culture opened the meeting. Mr Mohammed S. Sheya (United Republic of Tanzania) was elected Chairperson. The representatives of Belarus, Greece, the Libyan Arab Jamahiriya and Mongolia were elected Vice-Chairpersons and Mr Carlos Ortega (Peru) was elected Rapporteur. The provisional agenda proposed by the Secretariat was adopted.

III. Report of the Secretariat

3. In accordance with item 3 of the agenda, the Secretariat’s Report on developments since the Committee’s previous session (CLT-2009/CONF.212/COM.15/2) was presented to the Committee. The report provided an update on the progress made in the implementation of the recommendations of the fourteenth session (2007) and on the activities carried out by the Organization with its partners: the International Council of Museums (ICOM), INTERPOL, the International Institute for the Unification of Private Law (UNIDROIT), the World Customs Organization (WCO), the Italian Carabinieri and the French Office Central de Lutte Contre le Trafic des Biens Culturels (OCBC).

4. More specifically, the report gave an account of the promotion of bilateral relations between countries concerned by pending requests for restitution of cultural property brought before the Committee; the UNESCO Cultural Heritage Laws Database; the Athens International Conference (17 and 18 March 2008); and the outcomes of the extraordinary session of the Committee (25-28 November 2008) in Seoul¹ on the occasion of its 30th anniversary, which was made possible with the financial backing of the Republic of Korea. It also reported on the results of the meeting on the Declaration of principles relating to cultural objects displaced in connection with the Second World War (17 and 18 March 2009); the status of the Fund of the Committee; relations with ECOSOC and the United Nations Office on Drugs and Crime (UNODC); United Nations Security Resolution 1483 concerning Iraq and the protection of its cultural heritage, adopted on 22 May 2003; and lastly, the state of ratifications of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention.

5. The Chairperson then opened the debate and a number of African States immediately lamented the low rate of ratification of the 1970 and 1995 Conventions on their continent. They called for a strategy for promoting these legal instruments, pointing to the increase in the illicit traffic of cultural property during armed conflicts. They reaffirmed the need to promote awareness-raising programmes, not only for those in charge of protecting cultural heritage, but also for the general public. They then suggested that the Director-General, through the Assistant Director-General for the Africa Department, ask the African Union, Heads of State and Ministers to include consideration of the ratification of the Conventions in their agendas. The Secretariat described the different activities held in collaboration with ICOM, UNIDROIT and the UNESCO Offices in Africa and gave particulars of upcoming training projects, particularly the training workshop on combating the illicit trade in cultural property, organized by the Carabinieri and UNESCO in Italy for 20 participants from Africa (Vicenza, 15-26 June). The Secretariat also mentioned the close

¹ For the Recommendations and Conclusions endorsed during the extraordinary session, see :http://portal.unesco.org/culture/fr/ev.php-URL_ID=37197&URL_DO=DO_TOPIC&URL_SECTION=201.html

cooperation with the organizers of the African Union Congress to be held in October 2009 at which it would be possible to make an appeal for further ratifications.

IV. Discussion on a Draft model law defining State ownership of cultural property

6. One of the major debates during the Committee's extraordinary session in Seoul in November 2008 had concerned the preparation of model provisions for protecting cultural property against illicit traffic. They would be proposed to States as a model that could be integrated into their own body of law or adapted nationally in accordance with specific legal traditions. The aim was to ensure that all States were equipped with sufficiently explicit legal principles to guarantee their ownership of cultural property.

7. Mr Patrick O'Keefe, Honorary Professor at the University of Queensland (Australia), presented the legal obstacles which many countries faced during the restitution process, particularly when dealing with archaeological artefacts from sites for which there were no inventories or documentation on provenance. He encouraged States to affirm their right to ownership of cultural heritage as an inalienable and imprescriptible right and to claim the ownership of all as yet undiscovered archaeological and cultural property.

8. Professor Jorge Sanchez-Cordero, from the Mexican Centre of Uniform Law, presented a project for the effective promotion of ratification of the 1970 and UNIDROIT Conventions. Describing these Conventions as "two sides of the same coin", he depicted the UNIDROIT Convention to the Committee as the natural follow-up to the 1970 Convention. In the same vein as Professor O'Keefe, he defended the possibility of drafting a uniform law to fill the legal void at the international level. He also suggested the creation of a working group that could address the task of standardization.

9. These presentations were well received by the Committee, which recommended that debate on the matter be continued in a committee of independent experts, made up by the Secretariats of UNESCO and UNIDROIT. That committee would be tasked with preparing the model legal provisions defining State ownership, particularly of archaeological heritage, that could be a wellspring for the drafting of national laws and encourage a standardization of their terminology, taking into account not only legal aspects but also ethical, philosophical and historical factors. The draft recommendation was approved by all participants during their discussions but was not formally adopted, for want of time.

V. Presentation on a collection of essays "Witnesses to History – Documents and Writings on the Return of Cultural Objects"

10. The Director-General of UNESCO, Mr Matsuura, joined the members of the Committee and thanked them for their efforts since the previous session in the fight against the illicit traffic of cultural property. He also offered encouragement to the Committee and Member States with respect to their work in the restitution of cultural property, citing the return of the Aksum Obelisk to Ethiopia. He expressed his wish for progress in the negotiations between Greece and the United Kingdom regarding the Parthenon Marbles, between Turkey and Germany with regard to the Boğazköy Sphinx and between the United Republic of Tanzania and Switzerland concerning the Makonde Mask. He then presented the publication "Witnesses to History – Documents and Writings on the Return of Cultural Objects", and thanked the Government of the Republic of Korea for its support.

11. In the presence of the Director-General, Ms Lyndel V. Prott, Honorary Professor at the University of Queensland (Australia), gave an account of the book, of which she was editor in chief. The publication is an anthology of reference texts on the historical, legal, philosophical and ethical issues regarding the return of cultural property, including reflections and debates on the subject from the 18th Century to the most recent perspectives and thinking on the subject. The book would be translated into Korean through a contribution from the Republic of Korea.

12. The book was very favourably received by the members of the Committee and the observers present. Several participants expressed a wish for the publication to be translated into other languages such as French, Chinese, Arabic and Spanish. The Secretariat requested assistance from the Member States for that undertaking. Greece and Switzerland have already pledged to finance the translation into French.

VI. Review of cases pending before the Committee and promotion of bilateral negotiations

13. The parties concerned by the three cases pending before the Committee, the Parthenon Marbles, the Boğazköy Sphinx and the Makonde Mask, submitted the most recent information on ongoing bilateral negotiations. Each of the three cases was the subject of a recommendation prepared under the auspices of the Committee with the help of the Secretariat, and presented jointly by the parties concerned, namely Greece and the United Kingdom of Great Britain and Northern Ireland; Turkey and Germany; and the United Republic of Tanzania and Switzerland.

14. Pursuant to Recommendation No. 1 adopted by the Committee at its fourteenth session, the Director-General sought to encourage the holding of meetings between Greece and the United Kingdom and renewed the offer of assistance by UNESCO. Contacts were being maintained between professionals in the two countries concerned and the Secretariat had attended a meeting between representatives of the two countries on 23 April 2009 in London. Another meeting was held on the second day of the Committee's session (12 May 2009). The British Museum offered to loan some of the panels on condition that Greece officially acknowledge the British Museum's ownership of the Marbles. The Hellenic authorities reiterated their wish to see a definitive or temporary reunification of the sculptures in Athens. Greece also underlined the valuable cooperation with the United Kingdom on cultural matters which, it hoped, would continue and would act as a catalyst in finding a solution for the Parthenon Marbles.

15. In keeping with Recommendation No. 2 adopted by the Committee at its fourteenth session, the Director-General invited Germany and Turkey to continue dialogue "with a view to bringing this issue to a mutually acceptable solution" for both parties. He also proposed assistance from the Secretariat to that end. Messages referring to UNESCO's good offices 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 had yet been held between the two parties since the Committee's previous session. The representative of Turkey, addressing the Committee, gave an overview of the case. Turkey and Germany jointly presented to the Committee a draft recommendation that the Committee adopted (Recommendation No. 2).

16. The third recommendation adopted at the fourteenth session pertained to the Makonde Mask. Discussions were under way and the Swiss authorities were in regular contact with the owner of the museum in possession of the mask. In that respect, Switzerland played a pivotal role as facilitator in the negotiations between the United Republic of Tanzania and the Barbier-Mueller Museum. For its part, the United Republic of Tanzania gave its written assurance that the Makonde Mask would be well protected.

VII. UNESCO's activities in Iraq

17. The representative of the UNESCO Office for Iraq in Amman, Ms Nayab Al-Dabbagh, reported on UNESCO's activities in Iraq, more specifically on the projects implemented by Headquarters and the local Office. Thus, the members of the Committee were given a detailed account of the results of the legal and operational workshop organized in November 2008 with funding from the Czech Republic.

VIII. Presentation on the Proceedings of the Athens International Conference

18. The Proceedings of the Athens International Conference, held on 17 and 18 March 2008 at the invitation of the Greek Government in the New Acropolis Museum, were presented to the members of the Committee and to the other States and observers in attendance by Ms Elena Korka, Director of Prehistorical and Classical Antiquities at the Hellenic Ministry of Culture. She gave a report on the background, statements, participants and results. The official Proceedings had been published in a special issue of UNESCO Museum International (no. 241-242).

IX. Examination of the draft rules of procedure on mediation and conciliation in accordance with Article 4, paragraph 1, of the Statutes

19. The General Conference at its 33rd session adopted 33 C/Resolution 44, which added mediation and conciliation to the terms of reference 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 of the 11 articles had then been examined 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 had 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 of procedure had been distributed to the members of the Committee and to all the other States and observers prior to the meeting for comment. Upon reception and analysis, a summary of the comments and amendments and a consolidated draft of the rules of procedure were prepared by the Secretariat² and submitted for consideration to the members of the Committee and other States and observers at the fifteenth session.

21. The first four Articles of the draft rules of procedure (Scope, Nature of the Procedures and Roles of the Mediator and of the Conciliator, Main Principles and Parties), were debated at length in a spirit of cooperation and consensus on the part of the members of the Committee and observers. Nonetheless, it was not possible to come to an agreement on a number of key questions and, consequently, it was decided that a working group would be created to draft proposals reflecting the different points of view. The group presented its findings and proposed amendments to the plenary and the first three articles were subsequently approved. However, with regard to Article 4 concerning parties to a mediation or conciliation procedure, the Committee was unable to reach a consensus. As a result, it was decided to create an ad-hoc sub-committee that would continue discussions on the draft text between the fifteenth and sixteenth sessions and present the results of its work at the next meeting of the Committee. It was also decided that, in line with the principle of balanced geographical distribution, the sub-committee would be composed of three representatives of States members of the Committee from each regional group and open to all observers wishing to attend the discussions. The Secretariat was tasked with finalizing the composition and setting the dates in due course, but Japan objected to the creation of the subsidiary body in question.

X. Presentation of strategy proposals for the future work of the Committee and expert involvement

22. To follow up the discussions held in Athens in March 2008 and in Seoul in November of that same year, and in order to continue to nurture the Committee's deliberations on its *raison d'être* and future activities, the UNESCO Secretariat invited a number of experts to participate in the work of the Committee and address the States members.

² See document CLT-2009/CONF.212/COM.15/1

23. Professor Tullio Scovazzi of the University of Milan enlightened the members of the Committee and other States and observers present on the inquiry conducted on behalf of UNESCO into the developments regarding ethical principles and legal rules and their consequences on the protection of cultural property. Such principles, applicable to the protection of heritage and the return and restitution of cultural property, were thus analysed and assessed in order to determine how they could help the Committee in promoting the return of cultural property to its countries of origin or its restitution in case of illicit appropriation.³

24. With regard to ongoing study and research on alternative means for resolving conflicts regarding cultural property, the Secretariat had asked Professors Marie Cornu, Director of Research at CNRS, and Marc-André Renold of the University of Geneva to share with the Committee and the observers present the results⁴ of their collaboration on the subject. The members of the Committee and other participants welcomed their reflections and analyses and urged the Director-General to continue, with the help of experts, to further reflect on the two subjects, namely the new legal and ethical rules governing the protection of cultural heritage and alternative means for resolving conflicts regarding cultural property.

25. Lastly, the members of the Committee supported the development of the UNESCO Cultural Heritage Laws Database and suggested the creation of a new database on successful returns or restitution of cultural property, particularly when achieved through mediation or conciliation. They also expressed support for continuing information and awareness-raising activities concerning action to prevent the illicit traffic of cultural property, especially through the use of audiovisual material, with particular focus on Africa and local populations. The Secretariat would provide an initial response to that request by publishing a short film on its activities targeted at Member States, the art market and the general public.

26. During the final work session, Brigadier General Giovanni Nistri, Commander of the Carabinieri unit dedicated to preventing illicit traffic, gave a brief presentation of their activities and of projects conducted in cooperation with UNESCO. A representative of the World Intellectual Property Organization (WIPO) described the work of her organization, particularly in the field of mediation and conciliation. Lastly, a representative of Christie's, a leader in the art market, took the floor to explain the auction house's working methods and ethical rules. All the statements were of great interest to the participants and tied in with the Committee's intended role as an intergovernmental platform for discussion and a link between the various actors in the art market, both public and private, in the fight against the illicit traffic of cultural property.

XI. Forthcoming sessions of the Committee and closure of the meeting

27. In response to the renewed interest expressed by the international community in general and by Member States of UNESCO in particular in the prevention of the illicit traffic of cultural property and the procedures for their return and restitution, it was decided to pursue the discussions on those issues by holding the sixteenth ordinary session of the Committee during the first half of 2010 (Recommendation No. 5). That session would be part of the 40th anniversary of the 1970 UNESCO Convention and the 15th anniversary of the adoption of the 1995 UNIDROIT Convention. The members of the Committee also expressed approval of the idea of an annual meeting of the Committee insofar as extrabudgetary funds would allow.

28. Before the Chairperson closed the session officially, the Rapporteur, Mr Carlos Ortega, read the oral report outlining the main points of the discussions that had marked the three days of work and the decisions accordingly taken.

³ This study is available online at http://portal.unesco.org/culture/fr/files/39157/12433501645Scovazzi_Fr.pdf/Scovazzi_Fr.pdf

⁴ Article published in *Journal de Droit International* (Clunet), No. 2/2009, April-May-June 2009.

XII. Adoption of recommendations

27. Of the six draft recommendations prepared and examined by the members of the Committee to reflect fully the outcome of their discussions, five were adopted and are included in annex to the present report. There was consensus among participants regarding the sixth recommendation, which entailed strategy proposals for the future work of the Committee, but it could not be adopted formally owing to time constraints.

ANNEX

Recommendation No. 1

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

Acknowledging relevant UNESCO resolutions and recommendations,

Expressing its continuing concern for a solution to the issue of the Parthenon Marbles:

1. Welcomes in this respect the meeting held on 23 April 2009 in London between the Hellenic and British Ministries of Culture, together with observers from UNESCO and the British Museum,
2. Acknowledges the fruitful cooperation between Greece and the United Kingdom on cultural matters and expresses the wish that this should continue and work as a catalyst in this respect,
3. Acknowledges with great satisfaction the accomplishment and opening of the New Acropolis Museum on 20 June 2009 wherein it will be possible for the Parthenon Marbles to be exhibited in a special hall in direct visual contact with the monument,
4. Thanks Greece for inviting the Director-General of UNESCO and representatives from the United Kingdom to the opening ceremony of the Museum,
5. Takes note that three sculptural fragments have respectively been returned from the University of Heidelberg and loaned from Italy and the Vatican to Greece to be co-exhibited in the Parthenon Hall for the sake of their reunification with the original parts from which they were detached,
6. Invites the Director-General to assist in convening necessary meetings between Greece and the United Kingdom with the aim of reaching a mutually acceptable solution to the issue of the Parthenon Marbles.

Recommendation No. 2

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

Recalling the request of Turkey for the Sphinx of Boğazköy, which is currently on display in the Berlin Museum,

Noting the legal and cultural arguments, that have been made by both States concerned over a number of years,

Recalling the previous Recommendations (No. 2) adopted by the Committee on this question at its sixth, tenth, eleventh, twelfth, thirteenth and fourteenth sessions,

Acknowledging the continuing concern of Turkey for the long-awaited resolution of the issue of the Sphinx,

Noting that Turkey has transmitted a new dossier to the German side regarding the Sphinx during the 17th Session of the Turkish-German Joint Cultural Commission Meeting which took place in Ankara on 16 and 17 October 2006,

Recalling that the issue of the return of the Sphinx is a pending agenda item of the Committee since 1987,

Noting with satisfaction that the 7,400 cuneiform tablets which were part of the original request of Turkey from the German Democratic Republic were returned in November 1987, following the fifth session of the Committee in April 1987,

Noting also that the Boğazköy Sphinx was situated at Boğazköy (Hattusha) where it was excavated, which was the capital of the Hittite Empire and is currently inscribed in the UNESCO World Heritage List,

1. Expresses its hope that the pending request of Turkey with regard to the issue of the Sphinx will be solved through bilateral negotiation,
2. Takes note of the fact that the last bilateral negotiations on this issue took place on 19 November 2002 in Berlin, without reaching a solution,
3. Invites both Parties to hold comprehensive bilateral negotiations as soon as possible with a view to bringing this issue to a mutually acceptable solution,
4. Also invites the Director-General to continue his good offices towards the resolution of this issue and to report to the Committee at its sixteenth session.

Recommendation No. 3

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

Recalling the previous Recommendation No. 3 on this question at its fourteenth session;

Acknowledging the role of Switzerland to act as a facilitator in the negotiations between the United Republic of Tanzania and the Museum Barbier-Muller,

1. Welcomes the constructive negotiation process which is carried out with a view to the return of the Makonde Mask;
2. Notes the assurance statement for the protection of the Makonde Mask provided by the United Republic of Tanzania on 5 May 2009;
3. Encourages the United Republic of Tanzania and Switzerland to continue their efforts to resolve this matter in a positive manner.

Recommendation No. 4

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

Taking note of the progress achieved during the examination of the draft rules of procedure on mediation and conciliation;

4. Decides, in the application of Rule 10.1 of its Rules of Procedure, to constitute a sub-committee to continue inter-sessional discussions on the draft text and to present the results of its work during the next session of the Committee,

5. Decides that the sub-committee, which will be open-ended, will be composed in accordance with the principles of a balanced geographic distribution after consultation with the Presidents of the regional groups.

Recommendation No. 5

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

Decides to hold its sixteenth ordinary session at UNESCO Headquarters during the first half of 2010.