

Promote

THE RETURN OR THE RESTITUTION OF CULTURAL PROPERTY

◆ COMMITTEE – FUND – UNESCO CONVENTIONS

Promouvoir

LE RETOUR OU LA RESTITUTION DE BIENS CULTURELS

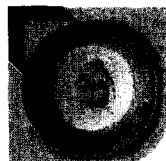
◆ COMITÉ – FONDS – CONVENTIONS DE L'UNESCO

Promover

EL RETORNO O LA RESTITUCIÓN DE LOS BIENES CULTURALES

◆ COMITÉ – FONDO – CONVENCIONES DE LA UNESCO



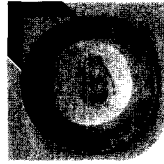


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This information kit was developed in order to: i) show the difficulties associated with the restitution of cultural property; ii) support the work of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation; and iii) encourage contributions to the International Fund of the Committee.

Contents

- *The Facts:*
Pillage, Theft, Illicit Traffic in Cultural Property
- *First Legal Development:*
The conventional response of the International Community within UNESCO and UNIDROIT
- *Second Legal Development:*
The institutional response of the International Community within UNESCO: the *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation*
- *Third Legal Development:*
The financial and contributive response of the International Community within UNESCO: the *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*
- *History of the Intergovernmental Committee and the Fund for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation*
- *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*
- *Appeal by the Director-General of UNESCO for voluntary contributions to the International Fund for the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation*
- *Examples of cases pending before the Committee*
- *Some examples of return or restitution*
- *Selective bibliography*



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The Facts: Pillage, Theft, Illicit Traffic in Cultural Property

Since ancient times, the “right to plunder” has been a widespread practice in case of war. Throughout History, conquering armies have pillaged the cultural goods of the vanquished country. Thus in Egypt, at the time of the pharaohs, tombs were already subject to plundering, and the kings of Babylon, Elam and Assyria had built museums to receive their spoils of war. In the countries they conquered, the Romans seized innumerable cultural treasures to embellish their capital city, and in the 5th century, Attila’s Huns pillaged Western Europe, just as Genghis Khan’s Mongol hordes pillaged China and Central Asia, and as the Crusaders did when they sacked Constantinople.

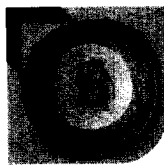
At the start of the colonial era, the practice of theft of cultural property became even more widespread, and practically systematic, no longer necessarily linked to war or military occupation. In general terms, the colonial penetration into Africa, Asia and South America generated a movement that scattered cultural heritage for the benefit of Western collections. This colonial framework continued to coexist with the more traditional, but ever-present, spoils of war. The many examples of this include the campaigns of Napoleon Bonaparte, which saw numerous antique objects shipped to France. In a different context, well-known is the removal of the famous Parthenon Marbles by Lord Elgin at the beginning of the 19th century, which were sold to the British government and have been on show at the *British Museum* in London ever since. But it is with the famous *Einsatzstab Reichsleiter Rosenberg* that the practice of pillaging found probably its most systematic expression: the appropriation, starting from 1940, of cultural goods and collections of works of art by the Nazis, which culminated with the seizing, in July 1944, of 21,903 art objects, including famous paintings and museum pieces.

This pillaging, which is as diversified in terms of causes and historical context as it is in scope (occasional or systematic), has evolved. On one hand, wars between States are, in principle, less frequent, whereas internal conflicts, often ethnically motivated, are intensifying, resulting in new legal and political

questions concerning the return of displaced goods. On the other hand, in addition to traditional pillaging associated with armed conflict, we are now seeing illicit traffic in cultural property which, like other traffic, most notably of arms, represents not only a lucrative business for certain traders, but also an extremely tempting source of additional income for certain deprived populations, above all in the countries “of origin” of the aforementioned goods. In addition, the growing interest in art objects belonging to other cultures has led to a staggering increase in demand and trade in these objects, particularly in the Western world. Illicit traffic of cultural objects now constitutes a global industry.

Due to the growing dimensions of this phenomenon, it no longer passes unnoticed. At national levels, legislative bodies are fighting pillaging and illicit traffic with more restrictive legislation, and at the international level, UNESCO, the International Council of Museums (ICOM), INTERPOL, and the World Customs Organization (WCO) are stepping up their efforts. The media are also contributing to the task by increasing public awareness. Art professionals are particularly sensitive to this issue, which is why a number of museums have adopted the ICOM’s Code of Ethics. UNESCO, for its part, also adopted the International Code of Ethics for Dealers in Cultural Property in 1999. Today, attentive checking of the origin of pieces on the market is becoming generalized, and is being undertaken with greater care.

As they are convinced that cultural property is an irreplaceable testimony to the culture and identity of a people, more and more countries would like or are requesting the restitution of works that were removed illicitly. However, the political and legal complexity of certain situations, mostly linked to less recent times or periods of occupation, the difficulty of reaching bilateral or multilateral agreements, the lack of understanding and the risk of disagreement between the countries concerned often prevent a rapid solution from being found that would satisfy the parties involved. Where there is no agreement on the obligation of restitution as a moral requirement, the international community has taken action by preparing, first of all under the aegis of UNESCO, an appropriate legal framework, and by reinforcing international co-operation in the complex field of the restitution of cultural property.



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First Legal Development:

The conventional response of the International Community within UNESCO and UNIDROIT

The increase in pillaging, theft and illicit export of cultural property is proof that the legislation of the originating States in this area, no matter how detailed and well thought-out, is not sufficient in itself to stop this traffic. In addition, once the object has left the national territory, this international movement, often combined with the purchase of the object in another country, or the fact that the object remains in the importing country for a considerable time, multiplies the obstacles to restitution of these objects. These include legal obstacles, depending on the content of the applicable laws, and even sometimes political obstacles, depending on the nature of the object and the interest the States concerned have with regard to the object. Once the object has been identified and found outside its country of origin, international co-operation is indispensable. This is why the international community has set up an entire legal and ethical arsenal to fight illicit traffic in cultural property, both through prevention (adequate legislation and updated inventories with photographs of the objects) and solutions, by facilitating restitution.

The diversity of the questions, particularly legal issues, raised by restitution in times of war and peace, explains the two sides to this arsenal.

I. Restitution following armed conflict

The 1954 UNESCO *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, and its 1954 and 1999 Protocols, have reinforced prohibition of all acts of destruction, theft, or pillaging of cultural property, already codified in similar terms by the *Conventions of The Hague concerning the laws and customs of land war* (Conventions of The Hague of 1899 and 1907). The first *Protocol* to the 1954 Convention is fundamental in that it obliges each High Contracting Party to: i) prevent the exportation of cultural property

from a territory occupied by it during an armed conflict; ii) take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory; iii) return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been illicitly exported (Art. I, paras. 1, 2 and 3). The obligation of restitution also applies to cultural property placed, in order to protect it from the dangers of an armed conflict, on the territory of another contracting State (Art. II).

The first *Protocol* also codifies another fundamental principle in international law: such property shall never be retained as war reparations (Art. I, para. 3). From the point of view of private law, the occupying State whose obligation it was to prevent the exportation of cultural property from the territory occupied by it, shall pay an indemnity to the holders in good faith of any cultural property which has to be returned (Art. I, para. 4).

II. Restitution in peace time

Over and above the more standard and traditional framework of pillaging in the event of armed conflict or military occupation, directly addressed by the 1954 Convention, by the end of the 1960s, this new plague of “generalized” or “peace time” illicit traffic raised such concern that the international community within UNESCO negotiated and adopted, on 14 November 1970, the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. The principles behind this Convention had already inspired the 1964 UNESCO *Recommendation* on the same theme.

This Convention was a pioneer document for its time, above all because it took position against uncertainties that existed concerning the restitution of cultural property due to the fact that the latter was subject to international private law and, pursuant to certain applicable national legislations, cultural property can be assimilated with tangible personal property, thus encouraging its circulation and acquisition by an owner of “good faith”. A mechanism for restitution was thus provided for. First in Article 7 for certain categories of cultural property for which diplomatic request has been made, as well as payment of fair compensation to the purchaser in good faith or the legal holder. Second in Article 13, which has a more general scope, but which is applicable only within the framework of the legislation of each State Party.

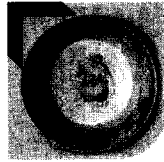
In practical terms, the Convention defines the following as illicit: the exportation of cultural property from its territory unless accompanied by an export certificate (Art. 6, para. b); the acquisition and import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to the Convention and illegally exported from this State (Art. 7); and the export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power (Art. 11).

The 1970 UNESCO Convention can not be applied retroactively. As of February 15, 2003, 97 States were Party to this Convention. Among these States, the most important in terms of the art market are the United States of America, France, Japan, the United Kingdom, and probably soon Switzerland.

On request by UNESCO, which has no specific mandate for private law, the International Institute for the Unification of Private Law (UNIDROIT), prepared the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*, adopted in Rome (Italy), on 24 June 1995. This Convention complements the 1970 UNESCO Convention from the point of view of private law. It establishes a body of uniform legal rules for the restitution and return of cultural goods, respectively in the case of theft or illicit exportation. Whereas the 1970 Convention is based on intergovernmental action (Art. 7), the UNIDROIT Convention enables both States – owners of an object that has been stolen or illegally exported – and individual owners who wish to recover a stolen object, to file a complaint before a foreign court. With the benefit of 25 more years' thought and experience on the issue of illicit traffic, this Convention contributes more than the 1970 Convention to restitution as regards the uncertainties in this field in international private law. This contribution concerns not only stolen cultural property, where the obligation of restitution is absolute and independent of the title of ownership that may be recognized by the law applicable to the transaction (Art.3), but also property exported illicitly, for which the obligation of return is clear, though with conditions (Art.5). In both cases, the third-party acquirer of the object is entitled to payment of fair compensation, subject to certain conditions of diligence at the moment of acquisition.

Although problems of restitution are traditionally linked to tangible property “on land”, illicit traffic also affects underwater cultural property. Adopted on 2 November 2001, at the 31st UNESCO General Conference, and although it does not establish a true system of restitution, the *Convention on the Protection of the Underwater Cultural Heritage* nevertheless opposes the illicit export of cultural property: States Parties shall take measures to prevent the entry into their territory, the dealing in, or the possession of, underwater cultural heritage illicitly exported and/or recovered, where recovery was contrary to this Convention (Art. 14). This Convention will enter into force three months after the deposit of the 20th instrument of ratification, acceptance, approval or accession.

The UNESCO (1954, 1970 and 2001) and UNIDROIT (1995) Conventions ensure the international protection of moveable cultural heritage, and, consequently, the memory of humanity. UNESCO invites its Member States to become parties to all these instruments, and contributes to raising the awareness of public opinion, in particular by publishing studies, assisting Member States in the drafting of effective legislation and organizing national and regional training workshops, often in co-operation with the International Council of Museums (ICOM) and INTERPOL.



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Second Legal Development:

The institutional response of the International Community within UNESCO

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

I. General information

In 1976, a Committee of experts met under the auspices of UNESCO in Venice and studied the question of the restitution or return of cultural property lost either due to foreign or colonial occupation, or following illicit traffic before the entry into force, for the States concerned, of the 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. Underlining the lack of international mechanisms, the experts invited the Director-General of UNESCO to envisage creating an international body with the task of researching the ways and means of facilitating bilateral negotiations for the restitution or return of cultural property and to encourage the countries concerned to reach agreements to this effect.

This is how the *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation* was created as a permanent intergovernmental body at the 20th Session of the UNESCO General Conference in 1978. The 22 members of the Committee are elected from the UNESCO Member States, and renewed by half at elections that take place every two years during the General Conference. The Committee meets every two years.

The Committee is an intergovernmental body with an advisory role. It provides a framework for discussion and negotiation, but its recommendations concerning inter-State disputes are not legally binding. To bring a case before the Committee, the requesting country can consult the UNESCO Secretariat, which will provide advice on the procedures to follow.

In 1981, the Committee drew up a *Standard Form for Requests for Return and Restitution* to simplify the presentation of the objective and detailed information required for negotiations to resume.

The Committee has helped solve a certain number of cases. In particular, it supervised the return to the museum of Corinth, in Greece, of several hundred objects held in the United States of America and the return to Bolivia of ancient textiles that had been illicitly imported to Canada. The Committee is currently examining other cases, in particular the request by Greece to the United Kingdom for the restitution of the Parthenon Marbles, and the request by Turkey for the restitution of the Sphinx of Boguskoy, currently exhibited at the Museum of Berlin.

II. Functions and scope of application of the Committee

According to its Statutes (Article 4), the Committee is responsible for:

- seeking ways and means of facilitating bilateral negotiations and promoting multilateral and bilateral co-operation with a view to the restitution or return of cultural property to its countries of origin;
- encouraging the necessary research and studies for the establishment of coherent programmes for the constitution of representative collections in countries whose cultural heritage has been dispersed;
- fostering a public information campaign on the real nature, scale and scope of the problem of the restitution or return of cultural property to its countries of origin;
- guiding the planning and implementation of UNESCO's programme of activities with regard to the restitution or return of cultural property to its countries of origin;
- encouraging the establishment or reinforcement of museums or other institutions for the conservation of cultural property and the training of the necessary scientific and technical personnel;
- promoting exchanges of cultural property in accordance with the Recommendation on the International Exchange of Cultural Property (1976);
- reporting on its activities to the General Conference of UNESCO at each of its ordinary sessions.

The scope of application (*ratione materiae* and *temporis*) of the Committee is wide, in that it can be approached with all requests related to:

a) *ratione materiae*:

- any cultural property which has a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO and which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation;
- the term “cultural property” denotes historical and ethnographic objects and documents including manuscripts, works of the plastic and decorative arts, palaeontological and archaeological objects and zoological, botanical and mineralogical specimens.

b) *ratione temporis*:

as it assists Member States in seeking solutions relating to restitution outside of the pre-established conventional frameworks that are not generally retroactive, we can appreciate the importance of the role played by the Committee, in this respect in particular, since its field of application (*ratione temporis*) is not limited to restitution requests specific to certain periods.



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Third Legal Development:

The financial and contributive response of the
International Community within UNESCO

*The 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*

When the *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation* was created in 1978, it was recommended that a Fund be created to enable the Committee to function effectively. In the same vein, in 1977, a *Study on the Principles, Conditions and Means for the Restitution or Return of Cultural Property in View of Reconstituting Dispersed Heritages*, carried out by the International Council of Museums (ICOM), had recommended the creation of such a Fund as the privileged instrument of action for the Committee.

In November 1999, the UNESCO General Conference, sitting for its 30th session, adopted Resolution 27 inviting the Director-General to create within the Organization a *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*, in compliance with Recommendation no. 6 adopted the same year by the Committee at its 10th session. This Fund, maintained by voluntary contributions from States and private partners, aims to support Member States in their efforts to pursue the return or restitution of cultural property and effectively fight illicit traffic in cultural property, particularly with regard to the verification of cultural objects by experts, transport of these objects, insurance costs, and the setting up of facilities to exhibit them in satisfactory conditions and the training of museum professionals in the originating countries.

In March 2001, the Director General of UNESCO launched an appeal to all States and institutions to associate themselves with this global effort and

contribute generously to the Fund in order to facilitate effective restitution of cultural property to its State of origin or its owner.

Above and beyond the perimeter of UNESCO, the United Nations General Assembly, at its 56th session (2001), adopted Resolution 97, which encourages the Director-General of UNESCO to “*define and apply*” a strategy enabling promotion of the Fund, and invites the Member States, intergovernmental bodies, the private sector and other donors concerned from the international community to make voluntary contributions to the Fund. In 2002, the Executive Board of UNESCO, taking note of this Resolution, invited the Director-General to define the aforementioned strategy.

The Fund is open to voluntary contributions.

Contact:

UNESCO

International Standards Section,
Division of Cultural Heritage

1, rue Miollis – 75732 Paris Cedex 15

Phone/téléphone: +33 (1) 45 68 44 37

Fax: +33 (1) 45 68 55 96

Web: <http://www.unesco.org/culture/legalprotection>

E-mail: ins.culture@unesco.org



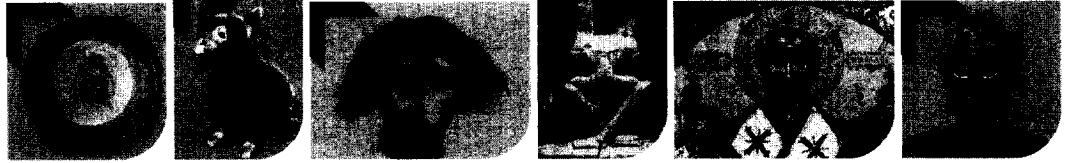
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History of the Intergovernmental Committee and the Fund for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation

- 1973 Resolution 3187 adopted by the General Assembly of the United Nations at its 28th session asserted that restitution, “by making good the serious damage suffered, is calculated to strengthen international cooperation”. The Resolution asked the Secretary General to present a report, prepared in collaboration with UNESCO, at the 30th session of the General Assembly of the United Nations.
- 1974 A Resolution of the 18th session of the General Conference of UNESCO (Paris, October 17 – November 23) invited the Director-General to contribute to restitution “by defining in general terms the most suitable methods, including exchanges on the basis of long term loans, and by promoting bilateral arrangements to the end” (Doc. 18 C/Resolutions, 3.428).
- 1978 The Director-General of UNESCO launched, on 7 June, an Appeal “for the return of irreplaceable cultural heritage to those who created it”. This text specifies that UNESCO’s action aims to promote the return of cultural property that is the most representative of its culture, cultural property to which “ these men and women who have been deprived (...) feel are the most vital, and whose absence causes them the greatest anguish”.
- 1978 The UNESCO General Conference, sitting for its 20th session (Paris, October 24 – November 28), created the *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation* (20 C/Resolutions and Corr. 4/7.6/5). When the Statutes of the Committee were examined, several delegates were in favour of the creation of a Fund to enable the Committee to function effectively.
- 1981 During the second session of the Committee (Paris, 14-18 September), the representative of the Congo recommended the creation of a special Fund to support the action of the Committee. The Bureau of the Committee

recommended to the Director-General that a feasibility study should be carried out on the issue, and submitted at the following session.

- 1994 After several sessions of the Committee, the eighth session (Paris, 24-27 May) adopted Recommendation no. 3 inviting the Director-General to examine the possibility of creating an international fund at UNESCO that would be financed by voluntary contributions, both public and private, and would be designed to facilitate the restitution of stolen or illegally exported cultural objects (Doc. CLT-94/Conf.203/3).
- 1999 The UNESCO General Conference, sitting for its 30th session (Paris, October 26 – November 17), created the *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* (30 C/Resolution 27).
- 2001 The eleventh session of the Committee (Phnom Penh, 6-9 March) adopted Recommendation no. 4 inviting the Director-General of UNESCO to define and implement an effective promotion strategy for the Fund, and Recommendation no. 3 supporting the publication of information on voluntary contributions to the Fund. At the same session, the Director-General launched an *Appeal for Contribution to the International Fund for the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation*.
- 2001 Resolution 56/97 of the United Nations General Assembly encouraged the Director-General of UNESCO to “*define and implement a strategy for the effective promotion of the International Fund, and invites Member States, intergovernmental bodies, the private sector and other interested donors of the international community to make voluntary contributions to the Fund*” (Doc. A/RES/56/97).



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*Statutes of the Intergovernmental Committee
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Article 1

An Intergovernmental Committee of an advisory nature whose services will be available to Member States and Associate Members of UNESCO involved, hereafter called the Committee, whose functions are defined in Article 4 below, is hereby established within the United Nations Educational, Scientific and Cultural Organization, hereafter called UNESCO.

Article 2

1. The Committee shall be composed of 22 Member States of UNESCO⁽¹⁾ elected by the General Conference at its ordinary sessions, taking into account the need to ensure equitable geographical distribution and appropriate rotation, as well as the representative character of those States in respect of the contribution they are able to make to the restitution or return of cultural property to its countries of origin.
2. The term of office of members of the Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its second subsequent ordinary session.
3. Notwithstanding the provisions of paragraph 2 above, the term of office of half of the members designated at the time of the first election shall cease at the end of the first ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference after the first election.
4. Members of the Committee shall be immediately eligible for re-election.
5. States members of the Committee shall choose their representatives with due attention to the terms of reference of the Committee as defined by these statutes.

Article 3

1. For the purposes of these statutes, 'cultural property' shall be taken to denote historical and ethnographic objects and documents including manuscripts, works of the plastic and decorative arts, palaeontological and archaeological objects and zoological, botanical and mineralogical specimens.
2. A request for the restitution or return by a Member State or Associate Member of UNESCO may be made concerning any cultural property which has a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO and which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation.
3. Cultural property restituted or returned shall be accompanied by the relevant scientific documentation.

Article 4

The Committee shall be responsible for:

1. seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to its countries of origin when they are undertaken according to the conditions defined in Article 9;
2. promoting multilateral and bilateral co-operation with a view to the restitution and return of cultural property to its countries of origin;
3. encouraging the necessary research and studies for the establishment of coherent programmes for the constitution of representative collections in countries whose cultural heritage has been dispersed;
4. fostering a public information campaign on the real nature, scale and scope of the problem of the restitution or return of cultural property to its countries of origin;
5. guiding the planning and implementation of UNESCO's programme of activities with regard to the restitution or return of cultural property to its countries of origin;
6. encouraging the establishment or reinforcement of museums or other institutions for the conservation of cultural property and the training of the necessary scientific and technical personnel;
7. promoting exchanges of cultural property in accordance with the Recommendation on the International Exchange of Cultural Property;
8. reporting on its activities to the General Conference of UNESCO at each of its ordinary sessions.

Article 5

1. The Committee shall meet in regular plenary session at least once and not more than twice every two years. Extraordinary sessions may be convened as specified in the Committee's Rules of Procedure.

2. Each member of the Committee shall have one vote, but may send to the Committee's sessions as many experts or advisers as it deems necessary.
3. The Committee shall adopt its own Rules of Procedure.

Article 6

1. The Committee may set up *ad hoc* subcommittees for the study of specific problems related to its activities, as described in paragraph 1 of Article 4. Membership of such subcommittees may also be open to Member States of UNESCO which are not represented in the Committee.
2. The Committee defines the mandate of any such *ad hoc* subcommittee,

Article 7

1. At the beginning of its first session, the committee shall elect a Chairman, four Vice- Chairmen and a Rapporteur; these shall form the Committee's Bureau.
2. The Bureau shall discharge such duties as the Committee may lay upon it.
3. Meetings of the Bureau may be convened in between sessions of the Committee at the request of the Committee itself, of the Chairman of the Committee or of the Director- General of UNESCO.
4. The Committee shall elect a new Bureau whenever its own membership is changed by the General Conference in accordance with Article 2 above.
5. The members of the Bureau who are representatives of Member States of UNESCO shall remain in office until a new Bureau has been elected.⁽²⁾

Article 8

1. Any Member State which is not a member of the Committee or any Associate Member of UNESCO that is concerned by an offer or a request for the restitution or return of cultural property shall be invited to participate, without the right to vote, in the meetings of the Committee or of its *ad hoc* subcommittees dealing with that offer or request. The States which are members of the Committee that are concerned by an offer or request for the restitution or return of cultural property shall not have the right to vote when such offer or request is being examined by the Committee or its *ad hoc* subcommittees.
2. Member States and Associate Members of UNESCO which are not members of the Committee may attend meetings of the Committee and of its *ad hoc* subcommittees as observers.
3. Representatives of the United Nations and other organizations of the United Nations system may take part, without the right to vote, in all meetings of the Committee and of its *ad hoc* subcommittees.
4. The Committee shall determine the conditions under which international governmental and non-governmental organizations, other than those covered by paragraph 3 above, shall be invited to attend its meetings or those of its *ad hoc* subcommittees as observers.

Article 9

1. Offers and requests formulated in accordance with these statutes, concerning the restitution or return of cultural property, shall be communicated by Member States or Associate Members of UNESCO to the Director-General, who shall transmit them to the Committee, accompanied, in so far as is possible, by appropriate supporting documents.
2. The Committee shall examine such offers and such requests and the relevant documentation in accordance with Article 4, paragraph 1, of these statutes.

Article 10

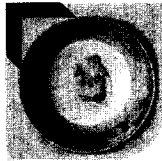
1. The Secretariat of the Committee shall be provided by the Director-General of UNESCO, who shall place at the Committee's disposal the staff and other means required for its operation.
2. The Secretariat shall provide the necessary services for the sessions of the Committee and meetings of its Bureau and *ad hoc* subcommittees.
3. The Secretariat shall fix the date of the Committee's sessions in accordance with the Bureau's instructions, and shall take all steps required to convene such sessions.
4. The Committee and the Director-general of UNESCO shall make the greatest possible use of the services of any competent international non-governmental organization in order to prepare the Committee's documentation and to ensure that its recommendations are implemented.

Article 11

Each Member State and Associate Member of UNESCO shall bear the expense of participation of its representatives in sessions of the Committee and of subsidiary organs, its Bureau and its *ad hoc* subcommittees.

These Statutes were adopted by Resolution 4/7.6/S of the Twentieth Session of the General Conference of UNESCO, Paris, 24 October to 28 November 1978.

- (1) The General conference of UNESCO adopted, at its twenty-eighth session (Paris, October-November 1995), Resolution 28 C/22 increasing the membership of the Intergovernmental Committee from twenty to twenty-two Member States.
- (2) Resolution of the Twenty-third Session of the General Conference of UNESCO, adopted on 4 November 1985.



Promote THE RETURN OR THE RESTITUTION OF CULTURAL PROPERTY
Promouvoir LE RETOUR OU LA RESTITUTION DE BIENS CULTURELS
Promover EL RETORNO O LA RESTITUCIÓN DE LOS BIENES CULTURALES

Appeal by the Director-General of UNESCO
for voluntary contributions to the
*International Fund for the Return of Cultural
Property to its Countries of Origin or
its Restitution in case of Illicit Appropriation*

Thirty years after the adoption by UNESCO of the 1970 UNESCO *Convention on The Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, many peoples continue to suffer from the loss of their unique and irreplaceable cultural heritage representing the memory of their forefathers. Theft, looting and illicit excavation continue on an appalling scale, thereby causing an endless depletion of peoples' cultural treasures.

There is a growing feeling in the international community that these peoples should be empowered to recover objects which they created and which best represent their culture.

Acceptance has increased worldwide for the 1970 UNESCO Convention, the universal legal instrument under whose provisions stolen and illegally exported artefacts can be claimed back. A number of major art trading States are now party to the Convention and others are working towards accession. While the number of demands for the restitution of cultural property steadily rises, more and more States are willing to assist in the return of these objects to their creators.

The likelihood of recovery of illicitly traded objects lessens the incentive of buyers to acquire objects whose provenance is dubious and thus helps dim the attraction of speculating heritage objects.

However, lack of resources still hampers many attempts at reclamation and it is clear that States making such claims cannot alone solve the problem of recovering their lost heritage. Funds are to be found for transportation of objects, suitable exhibition facilities provided and museum professionals properly trained.

When the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation was formed in 1978, it was recommended that a Fund be established in order to enable it to function effectively. It has now been established, and was launched on the occasion of the 30th anniversary of the 1970 UNESCO Convention, on 15 November 2000.

I therefore solemnly appeal to all States and institutions to join in the international effort to contribute generously to the International Fund for the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation and thereby assist in the effective return of cultural property to its creators.

A handwritten signature in black ink, appearing to read 'K. Matsuura', written in a cursive style.

Koïchiro Matsuura



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Examples of Cases Currently Pending before the Committee

- In September 1984, Greece filed a request with the UNESCO Intergovernmental Committee in view of the restitution of the famous Parthenon Marbles of Athens, removed on the order of Lord Elgin, British Ambassador to the Ottoman Empire. These works, which have been on display in the *British Museum* in London since their purchase by the British State, have been the subject of lasting controversy since Greece became independent in 1830. In 1984, the Greek Minister of Culture, Melina Mercouri, demanded their restitution. During several sessions, in particular in 1989, 1991, 1994 and 1996, the Committee adopted recommendations calling for an amicable settlement of the dispute. Reiterated in 1999, the Committee invited the Director-General of UNESCO to take new initiatives designed to encourage bilateral negotiations between Greece and the United Kingdom.
- In January 1986, Turkey filed a request with the Intergovernmental Committee concerning the return of a Hittite Sphinx, currently kept at the *Staatliches Museum Vorderasiatische Abteilung* in Berlin. In the years 1906-1907 and 1911-1912, over 10,000 cuneiform tablets and two sphinxes were discovered at the Turkish archaeological site of Boguskoy. In 1917, these objects were temporarily sent to the *Vorderasiatisches Museum* in Berlin to be cleaned, restored, catalogued and published. In 1924 and 1942, 2,943 tablets and one of the sphinxes were sent back to Turkey, unlike other pieces, mainly due to the lack of safe passage during conflict. Bilateral negotiations are underway, encouraged by a new Recommendation adopted at the 11th session of the Committee, which invites the two parties to continue negotiations and the Director-General to offer his support to resolve this issue.



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Some Examples of Return or Restitution

(The examples here, known to the Committee, are far from being a comprehensive list)

a) Restitution or return *stricto sensu*

- In September 1982, two portraits painted by Albrecht Dürer were returned to the German Democratic Republic by the United States of America following a court ruling.
- In January 1983, after a ruling by the Court of Turin, Italy returned a major collection of pre-Colombian ceramics to Ecuador that had been illegally exported in 1974. The UNESCO Intergovernmental Committee had provided moral support for the legal action engaged by the Ecuadorian authorities.
- In October and November 1987, due to the intervention of the UNESCO Intergovernmental Committee, 7,332 cuneiform tablets were returned to Turkey by the German Democratic Republic.
- In 1994, ancient textiles from Coroma were returned to Bolivia after a court ruling in Canada.
- On 27 March 1996, the Court of the First Instance of Genoa (Italy), ordered the restitution to Ecuador of 87 archaeological pieces dating back to the pre-Colombian era.
- On 23 April 1998, 4 pre-Colombian statues, which had been stolen during the 1980s from the Archaeological Park of San Agustín (Colombia), were returned during a ceremony that took place in Nantes (France). Two of them were listed in a stolen objects notice published by UNESCO, and in the ICOM publication (prepared with the support of UNESCO) entitled *One Hundred Missing Objects. Looting in Latin America*, distributed in 1997.
- In May 1999, Cambodia was able to recover 67 pieces of the ancient Khmer Rouge fortress of Anlong Veng, which were in the hands of Ta Mok, a former Khmer Rouge chief.

- On 10 April 2000, 59 pre-Colombian objects, in particular ceramic pottery dating from between 1800 and 1400 BC were returned to Peru by Canada.
- On 3 April 2001, a sculpture of the Evangelist Mark, dating from the 17th century, was returned to the Czech Republic by the Austrian auction house Dorotheum. This sculpture was included in the ICOM publication (prepared with the support of UNESCO), entitled *One Hundred Missing Objects. Looting in Europe*, distributed in 2000.
- On 26 April 2002, a head of Bayon style from the 12th century and one from the Angkor Wat period in the 11th century were returned to Cambodia by the *Honolulu Academy of Arts*. These two pieces were included in the list in the ICOM publication (prepared with the support of UNESCO) entitled *One Hundred Missing Objects. Looting in Angkor*, distributed in 1993.

**b) Restitution or return *lato sensu*
within the framework of an exchange**

- In February 1981, two sculpted birds, held at the Cape Museum in South Africa, were returned to Zimbabwe within the framework of an exchange.
- In 1986, the *Cincinnati Art Museum* (United States of America) and the Department of Antiquities of Amman (Jordan) decided jointly to exchange moulds of the respective parts of the of “Roundel with Bust of Atargatis-Tyche and Zodiac” in their possession in order for each museum to be able to present the work in its entirety. On 11 October 1983, Jordan had submitted a return request to the UNESCO Intergovernmental Committee.



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UNESCO

Web: <http://www.unesco.org/culture/legalprotection>

E-mail: ins.culture@unesco.org

1, rue Miollis – 75732 Paris Cedex 15

Phone/téléphone: +33 (1) 45 68 44 37 – Fax: +33 (1) 45 68 55 96



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This information kit was developed in order to:
i) *show the difficulties associated with the restitution of cultural property; ii) support the work of the Intergovernmental Committee Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation; and iii) encourage contributions to the International Fund of the Committee.*

Ce dossier d'information a été élaboré afin de :
i) *présenter les problématiques de la restitution des biens culturels; ii) soutenir l'action du Comité intergouvernemental pour la promotion du retour de biens culturels à leur pays d'origine ou de leur restitution en cas d'appropriation illégale; et iii) encourager les dons au Fonds international du Comité.*

Este folleto informativo fue elaborado con los siguientes objetivos: i) mostrar las dificultades asociadas con la restitución del patrimonio cultural; ii) apoyar el trabajo del Comité intergubernamental para fomentar el retorno de los bienes culturales a sus países de origen o su restitución en caso de apropiación ilícita; iii) fomentar las contribuciones al Fondo Internacional del Comité.