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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**

**Nineteenth Session  
Paris, UNESCO Headquarters, Room XI  
1-2 October 2014**

**Provisional agenda point 8:**

Report on the IOS evaluation, role of the Committee and proposed strategy

The Internal Oversight Service has recently completed the second part of an evaluation of the UNESCO Culture Sector's standard-setting work concerning the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The present document focuses on the comments provided by IOS about the role of the Committee, and proposes some strategies for the future work of this Intergovernmental body.

**Decision required:** paragraph 23

## INTRODUCTION

1. The evaluation conducted by the UNESCO's Internal Oversight Service (IOS) on the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was published in April 2013<sup>1</sup>.
2. The purpose of the overall evaluation was to generate findings and recommendations regarding the relevance and effectiveness of the standard-setting work of the Culture Sector, with a focus on its impact on legislation, policies, and strategies of Parties to UNESCO's culture conventions and on the implementation of the conventions at the national level. The evaluation also aims to help strengthen, refocus and better coordinate the Organization's standard-setting activities and Committees, requesting in particular a careful examination of 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 (ICPRCP) with regard to the newly created Subsidiary Committee. The evaluation also seeks to provide a better understanding on how conventions work in practice and to serve as a source of information for Member States. Furthermore, the evaluation of the 1970 Convention will serve to inform about UNESCO's future efforts to promote its implementation. The IOS report, entitled 'Evaluation of UNESCO's Standard-setting Work of the Culture Sector: Part II – 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property' is available online.
3. This evaluation was presented during the Second session of the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention (30 June – 2 July 2014, UNESCO Headquarters). To this end, a working document was prepared by the Secretariat to the attention of the Subsidiary Committee's members, as the evaluation provides a number of informative observations and useful recommendations<sup>2</sup>.
4. This 19<sup>th</sup> session of the ICPRCP is a new opportunity to take into account the findings and recommendations of the IOS evaluation concerning the role of this Committee in coordination with activities related to the implementation of the 1970 Convention.

### **I. THE IOS EVALUATION AND THE ICPRCP**

5. The evaluation report recalls that the ICPRCP served as a *de facto* committee of the 1970 Convention before the creation of specific periodic governing bodies in 2012.

*“The ICPRCP, while technically independent from the 1970 Convention has in some ways served as a de facto committee of the Convention due to the lack of any other body to fulfil this role and the complementarity between its mandate and the purpose of the 1970 Convention.”*

6. In the part dedicated to 'International cooperation in Service of Return', the IOS states that, both the 1970 Convention Secretariat and the ICPRCP have the role of facilitating the international coordination concerning discussions related to the return or the restitution of cultural property within UNESCO.

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<sup>1</sup> Document IOS/EVS/PI/133 REV.

<sup>2</sup> Document C70/14/2.SC/4

*“Within UNESCO, both the 1970 Convention Secretariat and the ICPRCP play a role in facilitating international coordination. The 1970 Convention Secretariat is often called upon to provide information and advice on how to navigate requests for return (e.g., whom to contact, identification of potential experts on the object in question, etc.) The ICPRCP was established in 1978 to, inter alia, “seek ways and means of facilitating bilateral negotiations for the restitution or return of cultural property” and “promote bilateral and multilateral co-operation with a view to the restitution and return of cultural property to its countries of origin.” Specifically, the ICPRCP was established to address cases concerning cultural property not covered by the 1970 Convention”.*

7. Finally, the IOS states that differences of opinion exist concerning the ICPRCP’s role for the promotion of return and restitution of cultural property:

*“While the ICPRCP has initiated the development of tools and resources to support international cooperation, respondents expressed a wide range of opinions as to its efficacy in directly promoting return and restitution of cultural property. Some respondents felt that the ICPRCP had had little success to date, and that most cases it had considered were actually resolved through other means, such as bilateral negotiations. Others felt that while this may be the case, the deliberations in the ICPRCP contributed to the rapprochement between the two parties. Despite these differences in opinion, the general consensus was that the ICPRCP’s role remains unique and valued, but that its function needs to be revisited and refined, particularly in light of the establishment of the Subsidiary Committee. Specifically, its mediation role can be further promoted and its fund should be examined to explore why it has been underutilized to date”.*

8. As the question of revisiting and redefining the ICPRCP’s role reached a consensus among the different respondents of the IOS evaluation, a particular recommendation was drafted on this subject:

*“Recommendation 13. Revisit and define 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 and initiate coordination with the Subsidiary Committee”.*

## **II. PROPOSED STRATEGY FOR FUTURE WORK OF THE COMMITTEE**

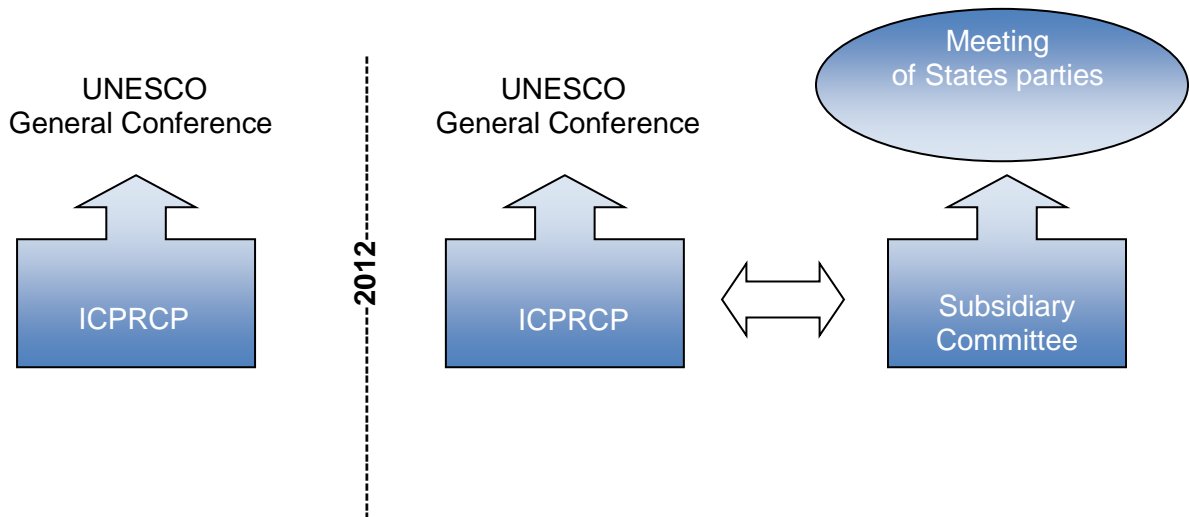
### ***II.1. Background***

9. As underlined by the IOS Evaluation, *“the ICPRCP, while monitoring independent from the 1970 Convention has, in some ways, served as a de facto monitoring committee of the Convention due to the lack of any other body to fulfil this role and the complementarity between its mandate and the purpose of the 1970 Convention.”* For example, all decisions concerning the creation of tools to facilitate the implementation of the 1970 Convention before 2012 were made through the ICPRCP, as no periodic statutory organs existed at that time. Therefore, in practice, the Committee’s decisions and recommendations adopted by its Member States since its creation in 1978 have enabled a better implementation of the 1970 Convention and a regular exchange of good practices.

10. By fulfilling its tasks, the Committee has triggered the creation of several legal and practical tools, in accordance with the provisions of the 1970 Convention, such as:

- International Code of Ethics for Dealers in Cultural Property (1999);
- UNESCO Database of National Cultural Heritage Laws (recommendation No. 5 of the 12th session, 2005);
- Model Export Certificate for Cultural Objects (2007);
- the promotion of international cooperation, awareness raising and training, including through publications (Legal and practical measures against illicit trafficking in cultural property in 2006 and the Compendium, *Witness to History-Documents and writings on the return of cultural objects* in 2010) and video materials (film and video clips in 2010-2011);
- adoption of the Rules of Procedure for Mediation and Conciliation (recommendation No.4 of the 16<sup>th</sup> Session, 2010);
- UNESCO-UNIDROIT Model provisions on State ownership of undiscovered cultural property (Recommendation No. 3 of the 16<sup>th</sup> session of the Committee in 2010, adopted in 2011).

11. This 19<sup>th</sup> session is the first since the creation of statutory bodies specifically dedicated to the implementation of the 1970 Convention<sup>3</sup>. This represents an opportunity to redefine the Committee's role in light of the recent statutory developments, since the organizational structure related to the programs implementing the 1970 Convention and the return and restitution issues changed drastically in 2012:



12. The periodic statutory bodies created in 2012 (the Meeting of States Parties and the Subsidiary Committee of the Meeting of States Parties) being now specifically dedicated to the implementation of the 1970 Convention, it is now time for the ICPRCP to focus on its essential tasks as defined in Article 4 of its Statutes.

<sup>3</sup> As the 18th session took place on 22 June 2012- one day after the Second Meeting of States Parties to the 1970 Convention, the Committee did not have the opportunity to discuss its future.

## **II.2. A new strategy for a new start**

13. The Statutes of the ICPRCP state that: *“the Committee is responsible for seeking ways and means of facilitating bilateral negotiations and promoting multilateral and bilateral cooperation for the return or the restitution of cultural property”*<sup>4</sup>. Its main objective is therefore to act as an advisory body which aims at facilitating bilateral negotiations in claims for restitution of significant pieces of cultural heritage, with a view to finding alternative means for dispute resolution.

14. The Committee is also entrusted with responsibility to disseminate good practices related to the return or restitution of cultural objects to their country of origin. There are multiple ways to solve international disputes regarding cultural property. Besides, the return or the restitution of cultural property offers many advantages. Therefore, it is necessary to inform the Members of the Committee and its observers of existing good practices on a regular basis.

15. Following a recommendation adopted during the 12<sup>th</sup> session of the Committee (2003), the Secretariat is invited to provide examples of return and restitution resolved outside its scope that may serve as inspiration for Member States. Therefore, several examples of return and restitution are presented in the annex to the Secretariat's report. The Committee also suggested the development of a database to support this initiative. Hence, with the financial support of the Swiss Federal Office for Culture a preliminary study was conducted and a draft database structure conceived to allow the Secretariat to systematize the information and practices. Unfortunately, this initiative has not been fully implemented due to reduced human and financial resources. Therefore, the Committee could provide funding in order to make the database operational in the short term. Furthermore, the Committee could ask the Secretariat to present to the next ordinary session a report on last developments.

16. *The Committee is responsible for “fostering a public information campaign on the real nature, scale and scope of the question of the restitution and return of cultural property to its countries of origin”*<sup>5</sup>. As presented in the Secretariat Report (doc. ICPRCP/14/19.COM/3, Chapter V), publications, media tools (video-clips, TV spots, films, etc.) and awareness-raising campaigns have been prepared by the Secretariat. These products are mainly dedicated to the fight against illicit traffic of cultural property, especially archaeological objects. They served to raise awareness among the public concerning the need to fight this scourge for preserving cultural heritage.

17. The development of additional tools, specifically dedicated to the return and restitution of cultural objects will be helpful for more effectively disseminating information on these issues as well as on the roles of the ICPRCP and UNESCO in this area. Therefore, the Committee could request the Secretariat to prepare proposals in this regard and present them during the next ordinary session of the Committee.

18. *The Committee is responsible for “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”*<sup>6</sup>. The 37<sup>th</sup> session of the UNESCO General Conference decided to incorporate in the 37 C/5 the programme related to museums under the expected result related to the implementation of the 1970 Convention (Expected Result 2 *“Policy dialogue promoted to combat illicit import, export and transfer of ownership of cultural property through enhanced, strengthened and more efficient international cooperation, including the implementation of the 1970 Convention and enhanced capacities of museums”*). Consequently,

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<sup>4</sup> Statutes of the ICPRCP, Article 4 paragraphs 1 and 2.

<sup>5</sup> Statutes of the ICPRCP, Article 4 paragraph 4.

<sup>6</sup> Statutes of the ICPRCP, Article 4 paragraph 6.

a specific chapter is integrated in the Secretariat Report (doc. ICPRCP/14/19.COM/3, Chapter VI) informing the Committee about the current activities led on the programmes concerning the constitution of collections and establishment of museums.

19. Thanks to the reinforcement of human resources through the redeployment process, the Secretariat will be better positioned to work towards the systematic training of museums professionals, the amelioration of security of collections, inventory issues and other aspects linked to the mitigation of risks and disasters in cultural institutions. This methodology could regularly incorporate items related to the return and restitution of cultural property. Therefore, the Committee could request the Secretariat to prepare an analysis in this regard and present it during the next ordinary session of the Committee.

20. *The Committee will have to coordinate its work with the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention.* As underlined in the part II.1 of this Document, a Subsidiary Committee of the Meeting of States Parties to the 1970 Convention was created in 2012. This new body is entrusted with specific dedicated tasks (see the table below).

	<b>ICPRCP</b>	<b>Subsidiary Committee</b>
Creation	1978	2012
Composition	22 Members	18 Members (3 for each regional group)
Election	During the UNESCO General Conference for a term of 4 years. During each General Conference, half of the members of the Committee are renewed.	By the Meeting of States Parties for a term of 4 years. Every 2 years, the Meeting of States Parties renews half of the members of the Committee.
Sessions	The Committee meets in regular plenary session at least once and not more than twice every two years.	At least, one session every year.
Mandate	The Committee shall be responsible for: <ol style="list-style-type: none"> <li>1. seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property (...). In this connection, the Committee may also submit proposals with a view to mediation or conciliation to the Member States concerned (...);</li> <li>2. promoting multilateral and bilateral cooperation with a view to the restitution and return of cultural property (...);</li> <li>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;</li> <li>4. fostering a public information campaign on the real nature, scale and scope of</li> </ol>	The functions of this Committee are: <ol style="list-style-type: none"> <li>a) to promote the purposes of the Convention, as set forth in the Convention;</li> <li>b) to review national reports presented to the General Conference by the States Parties to the Convention;</li> <li>c) to exchange best practices, and prepare and submit to the Meeting of the States Parties recommendations and guidelines that may contribute to the implementation of the Convention;</li> <li>d) to identify problem areas arising from the implementation of the Convention, including issues</li> </ol>

	<p>the problem of the restitution or return of cultural property (...);</p> <p>5. guiding the planning and implementation of UNESCO's programme of activities with regard to the restitution or return of cultural property (...);</p> <p>6. encouraging the establishment of museums or other institutions for the conservation of cultural property and the training of the necessary scientific and technical personnel;</p> <p>7. promoting exchanges of cultural property (...);</p> <p>8. reporting on its activities to the General Conference (...).</p>	<p>relating to the protection and return of cultural property;</p> <p><b>e) to initiate and maintain co-ordination with the ICPRCP in relation to capacity-building measures combating illicit traffic in cultural property;</b></p> <p>f) to report to the Meeting of States Parties on the activities it has carried out.</p>
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21. In their future recommendations and decisions, both committees will have to take into account their specific and statutory tasks to avoid overlapping their activities and to better complement each other, with respect to the implementation of the 1970 Convention and the promotion of the return and restitution of cultural property outside the scope of the Convention.

22. Thanks to this new division of functions between these statutory bodies, the Member States of UNESCO and the Associate Members will be provided with more efficient mechanisms dedicated to the protection of movable cultural property.

23. In view of foregoing, the Intergovernmental Committee may wish to adopt the following recommendation:

#### **DRAFT DECISION 19.COM 4**

The Committee,

1. Having considered document ICPRCP/14/19.COM/4, as well as the 'Evaluation of UNESCO's Standard-setting Work of the Culture Sector: Part II – 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property' (Document IOS/EVS/PI/133 REV.),
2. Welcoming the findings of the evaluation and the recommendations provided therein,
3. Taking note of the creation, in 2012, of periodic statutory bodies (the Meeting of States Parties and the Subsidiary Committee of the Meeting of States Parties) specifically dedicated to the implementation of the 1970 Convention,
4. Considering that it is necessary to focus on its essential tasks as defined in the Article 4 of its Statutes,
5. Decides to:
  - a. further promote the tools previously created under its auspices, in particular the 'International Code of Ethics for Dealers in Cultural Property', the 'Model Export Certificate for Cultural Objects' and 'the UNESCO-UNIDROIT Model Provisions on State ownership of Undiscovered cultural property';

- b. emphasize its role as facilitator of bilateral negotiations concerning the return and restitution of cultural property;
  - c. provide funding in order to establish a database on return and restitution cases operational in the short term, and request the Secretariat to present to the next ordinary session a report on last developments regarding the database;
  - d. develop initiatives to raise public awareness on the real nature, scale and scope of the question of the return and the restitution of cultural property; for this purpose request the Secretariat to prepare an analysis on the development of communication tools and present it to the next ordinary session of the Committee;
  - e. explore the possibilities to develop a methodology dedicated to the training of museums professionals including items linked to the return and restitution of cultural property; for this purpose requests the Secretariat to prepare proposals and present them to the next ordinary session of the Committee.
6. Reiterates the need to work closely with the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention to define and complement the activities of both committees without duplicating their efforts.