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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 11: Procedure to be followed for submitting a case to the Committee

This document recalls the procedure to be followed for submitting a case to the Committee. In this regard, this document provides a procedural roadmap available for all the States Members of UNESCO intending to submit a case to the Committee.

Decision required: paragraph 13

INTRODUCTION

1. The purpose of this document is to recall the procedure to be followed for submitting a case to the Committee. The Secretariat has been regularly consulted by Permanent Delegations on this question. It provides a procedural roadmap available for all the States Members of UNESCO intending to submit a case to the Committee.

I. PREAMBLE

2. As one of the roles of the Committee is to promote the bilateral negotiations (as mentioned in Article 4.1 of the Statutes of the Committee), States involved in a request for return or restitution of cultural property have to first initiate bilateral discussions. These discussions can be based, among other things, on:

- the provisions of the 1970 Convention;
- the spirit and principles contained in the 1970 Convention;
- national law(s)/regulation(s) implementing the 1970 Convention;
- a bilateral agreement based on the provisions of the 1970 Convention; or,
- any other means.

3. Generally, these discussions between States are sufficient enough to lead to a solution mutually acceptable for the parties concerned without the intervention of the Committee¹. It is recalled that, the main purpose for the creation of the Committee was to offer a negotiating forum when bilateral discussions initiated prove particularly difficult and have led to unsatisfactory results (the negotiations failed or are suspended)

II. PERSONAL SCOPE

Who can submit a case to the Committee?

4. As the Committee is an intergovernmental body, only UNESCO Member States and Associate Members of UNESCO may have recourse to this procedure.

What about institutions and private persons?

5. In the event that if a State agrees to represent the interests of public or private institutions located in its territory or the interests of its nationals. In such situation, the case can be brought to the Committee.

6. For example, this possibility was used for the case of the Makondé Mask resolved in 2010 under the auspices of the Committee. When the case was submitted to the Committee, Switzerland agreed to be a facilitator of the discussions between the Barbier-Mueller Museum (Geneva), the holding institution and the United Republic of Tanzania, the requesting State.

¹ This can be one of the reasons explaining the low number of cases submitted to the Committee.

III. MATERIAL SCOPE

Which kind of cultural property can be requested through the Committee?

7. As provided in Article 3 of the Statutes of the Committee, the cultural property requested by a State through the Committee must fulfill two conditions:

- first, the cultural property must have a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of the requesting State; and,
- second, the cultural property must have been lost as a result of colonial or foreign occupation or as a result of illicit appropriation.

IV. STANDARD FORM CONCERNING REQUESTS FOR RETURN OR RESTITUTION

8. This Standard Form was created in 1986 and is available online in English and French². This document has two columns: the left column is for the requesting State and the right one is for the holding State. Three parts have to be fulfilled: the documentary data on the object, suggested action and other observations.

9. The State who wishes to request a cultural property through the Committee should use this standard form to submit its request to the Secretariat of the Committee which will transmit the document to the holding State concerned.

10. The holding State should in turn use the Form to provide its reply to the request and return it to the Secretariat of the Committee within a period of one year from the date of receipt³.

V. TEMPORAL SCOPE

When should a State contact the Secretariat to include a new case in the agenda of an ordinary session of the Committee?

11. In order to include a new item related to a new case in the agenda of an ordinary session of the Committee, the request should be sent to the UNESCO Director-General at least six months before the opening of the session with all relevant information (appropriate supporting documents). In case of emergency, this time limit can be reduced⁴. It means also that the parties concerned submitted the 'Standard form concerning requests for return or restitution' (see part IV).

VI. THE POSSIBILITY OF MEDIATION OR CONCILIATION⁵

12. In 2010, the Committee enriched the mechanism offered to States seeking the return or the restitution of cultural property with the mediation and conciliation procedures. Therefore, any request for the return or restitution of cultural property which is submitted to the Committee may also be dealt with under a mediation or a conciliation procedure if the parties to the dispute so agree⁶.

² <http://portal.unesco.org/culture/fr/files/24701/11032757403formef.pdf/formef.pdf>

³ Standard form, Notes on completing the form, General.

⁴ Rules of Procedure of the Committee, Rule 3 (e).

⁵ More information related to these procedures is available in the working document ICPRCP/14/19.COM/6.

⁶ Rules of Procedure for Mediation and Conciliation, Article 1.1.

13. In light of the above, the Committee may wish to adopt the following recommendation:

DRAFT RECOMMENDATION 19.COM 5

The Committee,

1. Having examined document ICPRCP/14/19.COM/5 ;
2. Encourages all the States Members of UNESCO to submit cases of return and restitution to the Committee;
3. Requests these States to carefully follow the different procedural steps described in this document;
4. Requests the Secretariat to assist Member States and Associate Member States of UNESCO in the preparation and the follow-up of the procedure related to the submission of a case to the Committee, in close cooperation with its chairperson.

ANNEX

