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منظمة الأمم المتحدة
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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 12:

Discussions on the Mediation and Conciliation Rules
of Procedure and the updating the list of mediators /
conciliators

The purpose of this document is to provide the Members of the Committee with an update on the procedure of mediation and conciliation available within the framework of the Committee. The document provides practical information on substantive and procedural issues and the updated version of the list of mediators and conciliators.

Decision required: paragraph 18

INTRODUCTION / BACKGROUND

1. The purpose of this document is to provide the Members of the Committee with an update on the procedure of mediation and conciliation available within the framework of the Committee. The first part outlines and comments on the main lines of the procedure. The second part is devoted to the update of the list of mediators and conciliators.

I. MAIN LINES OF THE PROCEDURE

Objective

2. The Rules of Procedure for Mediation and Conciliation are aimed at facilitating and complementing the work of the Intergovernmental Committee. Therefore, any request for the return or restitution of cultural property submitted to the Committee may also be dealt with by a mediation or a conciliation procedure if the parties to the dispute so agree.

Material scope: what kind of cultural property can be requested through the mediation or conciliation procedure?

3. As for requests directly submitted to the Committee¹, the cultural property claimed by a State through the mediation or conciliation procedure 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,
- secondly, the cultural property must have been lost as a result of colonial or foreign occupation or as a result of illicit appropriation.

Personal scope: who can be the parties in the mediation or conciliation procedure?

4. The personal scope was influenced by the same objective: the mediation or conciliation procedure is complementary to the Intergovernmental Committee's work. Therefore, and as for the procedure submitted before the Committee, only UNESCO Member States and Associate Members of UNESCO may benefit from a mediation or conciliation procedure².

5. This precise scope concerning the parties eligible is nevertheless nuanced by the fact that article 4.2 of the Rules of Procedure provides the possibility for State to represent the interests of public and private institutions located in their territory or the interests of their nationals.

How to initiate a mediation or a conciliation procedure?

6. The procedure can be initiated only if the parties concerned consent to use it. Upon such mutual consent, either party shall submit a written request to the UNESCO Director-General. In addition, for cases already pending in front of the Committee, the Committee can also recommend to parties to make use of the mediation or conciliation procedure³.

7. The Secretariat may offer its assistance to the parties concerned if they request its good offices.

¹ Rules of Procedure for Mediation and Conciliation, article 1.1; Statutes of the ICPRCP, article 3.

² Rules of Procedure for Mediation and Conciliation, article 4.1

³ Rules of Procedure for Mediation and Conciliation, article 6

What are the costs for such procedures?

8. The Organization does not charge any fees for using these procedures. However, all the costs related to the mediation or conciliation procedures (such as the interpretation of meetings, translation of documents, travel of experts, etc.) will be covered in equal share by the parties concerned⁴.

II. LIST OF MEDIATORS / CONCILIATORS

Who can act as mediators and conciliators?

9. Given the complexity of the subject, only specialists with expertise in the field of restitution and/or knowledge with regard to the nature of the dispute or the specificity of the cultural property at stake, can be selected to act as a mediator or a conciliator⁵. According to Article 3.2 of Rules of Procedure, the mediation and conciliation procedure should be in accordance with the general principles of fairness, impartiality and good faith.

What is the role of the mediators and conciliators?

10. The main role of the mediators and conciliators – together with the parties concerned – is to facilitate just and mutually acceptable solution or settlement of the dispute⁶.

11. In order to reach this objective, the mediators and conciliators – appointed by the parties concerned – must observe strict neutrality and be respectful of the rules of conduct expressly mentioned in the Rules of Procedure for Mediation and Conciliation:

- they must act according the principles of fairness, impartiality and good faith;
- they must not act as a representative or counsel of either Party in any proceedings concerning the dispute at stake⁷.

12. In case of violation of such principles, a party can request the replacement of the mediators or conciliators⁸.

How to identify potential mediators and conciliators?

13. In order to help the parties concerned to identify such experts, the Secretariat draws up and maintains a list of potential mediators and conciliators. This list is at the disposal of the parties for their information and possible use. The parties do not necessarily need to choose their mediator or conciliator from this list and are free to appoint any other mediator and conciliator not included in this list⁹.

14. To that end, each Member State was invited by email on 13 August 2012 to nominate two individuals who could fulfill the role of mediator or conciliator in international cultural property disputes. As of 8 September 2014 30 countries provided names of their experts, as follows:

⁴ Rules of Procedure for Mediation and Conciliation, article 11

⁵ Rules of Procedure for Mediation and Conciliation, article 7.3

⁶ Rules of Procedure for Mediation and Conciliation, article 3.4

⁷ Rules of Procedure for Mediation and Conciliation, articles 5 and 3.2

⁸ The conditions for such replacement are provided in article 7.4 of the Rules of Procedure for Mediation and Conciliation

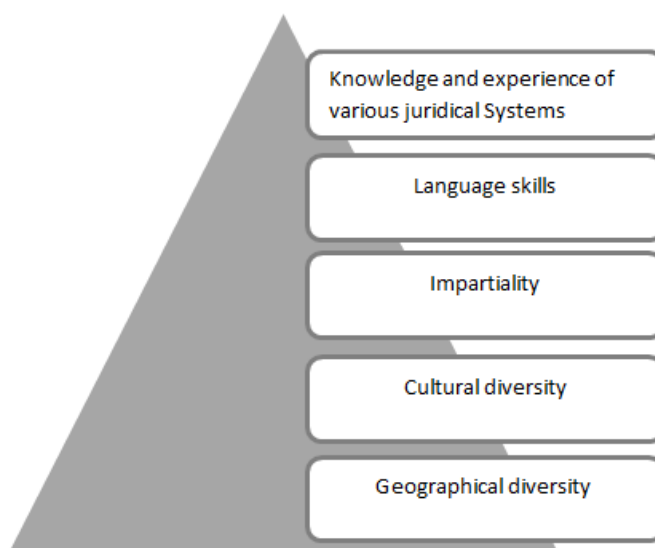
⁹ Rules of Procedure for Mediation and Conciliation, article 2.6

	Group I	Group II	Group III	Group IV	Group V(a)	Group V(b) ¹⁰
Number of countries	5	6	4	4	8	3
Total	30					

What are the advantages of the list?

15. The list provides the name of available experts from all over the world, from a diversity of background and of language competency.

Advantages:



16. This list needs to be updated as regularly as possible with new experts it to the benefit of member States willing to use the procedure of mediation or conciliation. In this regard, Members of the Committee are encouraged to provide the names of their experts. As of today, only one third (8 of 22) printed the names of their national experts¹¹.

Is the list of mediators / conciliators publicly available?

17. The list is available on UNESCO's website and regularly updated by the Secretariat¹² following the information given by the Permanent Delegations.

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

¹⁰ In accordance with groupings of Member States for the purpose of elections to the Executive Board

¹¹ The eight Members of the Committee who sent the names of their experts are: Bolivia (Plurinational State of), Côte d'Ivoire, Guatemala, Mali, Mexico, Peru, Poland and Turkey.

¹² <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/mediation-and-conciliation/>

III. DRAFT RECOMMENDATION 19.COM 6

The Committee,

1. Having considered document ICPRCP/14/19.COM/6 ,
2. Encourages States whose experts have not yet been designated, especially Members of the Committee, to submit their names and curriculum vitæ to the Secretariat;
3. Requests the Secretariat to assist Member States and Associate Member States of UNESCO in the preparation and follow-up of a mediation or a conciliation procedure as cases may arise and if the parties concerned so agree.

ANNEX

LIST OF MEDIATORS AND CONCILIATORS NOMINATED BY THEIR COUNTRIES

<i>Member States</i>	<i>Mediators and Conciliators Designated by their Country</i>
Albania	<i>Mr Engjëll Agaçi</i>
	<i>Ms Elira Kokona</i>
Belgium	<i>Prof. Johan Erauw</i>
	<i>Prof. Pierre De Maret</i>
Bolivia	<i>Mr Julio Ballivián</i>
	<i>Ms Lupita Meneses</i>
Botswana	<i>Ms Winani Winnie Kgwatalala</i>
	<i>Mr Phillip Segadika</i>
Bulgaria	<i>Ms Petya Gančovska</i>
China	<i>Mr Jianxin Zhang</i>
	<i>Ms Ye Zhu</i>
Côte d'Ivoire	<i>Ms Yooul Sylvie Kassi</i>
	<i>Ms Veronique Mousso</i>
Czech Republic	<i>Dr Jana Součková</i>
	<i>Dr Magda Němcová</i>
Russian Federation	<i>Mr Dmitry Sergueev</i>
	<i>Ms Lyubov Bourdova</i>
Greece	<i>Dr Artemis Papathanassiou</i>
	<i>Dr Eirene Stamatoudi</i>
Guatemala	<i>Mr Oscar Eduardo Mora Gomez</i>
	<i>Mr Eduardo Enrique Hernandez Herrera</i>
Iran	<i>Ms Sharareh Farokhnia</i>
	<i>Ms Monir Khalghi</i>
Italy	<i>Mr Maurizio Fiorilli</i>
	<i>Mr Sergio Marchisio</i>
Jordan	<i>Mr Jihad Haroun</i>
	<i>Mr Hani Falahat</i>
Mali	<i>Mr Samuel Sidibé</i>
	<i>Mr Ali Ould Sidi</i>
Mauritius	<i>Mr Philippe La Hausse de Lalouvière</i>
	<i>Mr Yann Von Arnim</i>
Mexico	<i>Dr Jorge Sánchez Cordero</i>
	<i>Mr Eduardo Matos Moctezuma</i>
Niger	<i>Dr Hassane Moulaye</i>
	<i>Dr Mariama Hima Yankori</i>
Nigeria	<i>Prof. Akin Oyebo</i>
	<i>Prof. Folarin Shyllon</i>
New Zealand	<i>the Hon. Sir Ian Barker</i>
	<i>Mr Phillip David Green</i>
Kuwait	<i>Mr Khalid Mohammed Al-Hammed</i>
	<i>Dr Mohamed Husain Al-Faili</i>
Pakistan	<i>Dr Muhammad Arif</i>
	<i>Mr Absul Azeem</i>
Peru	<i>Dr María Cecilia Bákula Budge</i>

	<i>Ms Samara Lafitte</i>
Poland	<i>Mr Andrzej Jakubowski</i>
	<i>Ms Alicja Jagielska-Burduk</i>
Portugal	<i>Mr Joaquim Pais de Brito</i>
	<i>Mr Paulo Ferreira da Costa</i>
Romania	<i>Dr. Ernest Oberlander-Târnoveanu</i>
	<i>Ms Anca Lăzărescu</i>
Rwanda	<i>Mr Marcel Kabanda</i>
	<i>Mr Jean Mukimbiri</i>
Swaziland	<i>Ms Rosemary Andrade</i>
	<i>Ms Dudu Nkambule</i>
Tunisia	<i>Mr Youssef Ben Ibrahim</i>
	<i>Ms Mounira Mnif</i>
	<i>Ms Samia Hammami</i>
Turkey	<i>Prof. Sibel Özel</i>
	<i>Prof. Esra Gül Dardagan Kibar</i>