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Item 5.12 of the provisional agenda

**STRATEGY TO FACILITATE THE RESTITUTION OF STOLEN
OR ILLICITLY EXPORTED CULTURAL PROPERTY**

OUTLINE

Source: 171 EX/Decision 17, and Recommendation No. 3 adopted by the 13th 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 (Paris, 7-10 February 2005) (Annex I).

Background: Pursuant to 32 C/Resolution 38, the Director-General presented to the Executive Board elements towards a strategy to facilitate the restitution of stolen or illicitly exported cultural property. After examining the document, the Executive Board, at its 171st session, invited the Director-General to include in the provisional agenda of the 33rd session of the General Conference an item on the strategy.

Purpose: The present document submits to the General Conference consolidated elements towards a strategy to facilitate the restitution of stolen or illicitly exported cultural property, and in particular contains a proposal for amending 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 (Annex II) so as to include mediation and conciliation functions.

Decision required: Paragraph 8.

1. 32 C/Resolution 38 paragraph 9 invited the Director-General “to present to the Executive Board at its 170th session a strategy to facilitate the restitution of stolen or illicitly exported cultural property by: (a) strengthening the mandate of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation, *inter alia* in terms of proposals of mediation and conciliation for Member States; (b) promoting the activities of the Committee in respect of awareness-raising at regional, sub-regional and national levels; (c) convening its sessions annually.” Notably, subparagraphs (a), (b) and (c) provide a clear framework for the strategy, and concern exclusively the mandate and functioning 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”).

A. Consolidated elements towards a strategy to facilitate the restitution of stolen or illicitly exported cultural property

2. This item was postponed to the 171st session of the Executive Board in order to benefit from the observations and/or recommendations of the Committee following its thirteenth session, held in Paris from 7 to 10 February 2005. The Committee adopted Recommendation No. 3 on this matter (attached as Annex I).

3. The Secretariat, taking into account the observations of the Committee provided in Recommendation No. 3, prepared document 171 EX/14 Add. for the consideration of the Executive Board, wherein the following preliminary elements towards a strategy were presented:

- (i) encouraging, and facilitating the task of, Member States to become party to and effectively implement the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), and the 1954 Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict;
- (ii) assisting Member States, upon request, to revise and strengthen their national legislation on the protection of cultural heritage, in particular with reference to illicit trafficking and favouring return and restitution;
- (iii) encouraging contributions to, and managing satisfactorily, the UNESCO Cultural Heritage Laws Database so as to strengthen this tool, useful to the fight against illicit trafficking in cultural property;
- (iv) promoting and administering 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;
- (v) promoting and facilitating implementation at national level of the Object ID standard jointly with the International Council of Museums, and of the Model Export Certificate for Cultural Objects jointly with the World Customs Organization;
- (vi) strengthening cooperation with partners such as INTERPOL, the International Council of Museums, the World Customs Organization and UNIDROIT on this issue;
- (vii) providing pertinent, useful information, explanations and examples concerning the illicit trafficking and return and restitution of cultural property at regional and sub-regional meetings;

- (viii) drawing attention to the Committee's activities and to the increasing illicit trafficking in cultural property originating in particular in countries affected by conflict or post-conflict situations, and facilitating the return or restitution thereof;
- (ix) developing and implementing a communications strategy to raise the attention of the media and the public at large on this issue and engage them in a proactive manner;
- (x) convening one or more international meeting(s) of experts in the field of return or restitution of cultural property to put a spotlight on the issue, sum up the relevant legal and moral grounds, identify the avenues leading to satisfactory results and serve as a catalyst to new, positive trends in the field; and
- (xi) expanding the mandate of the Committee to include the possibilities of mediation or conciliation for Member States.

4. Points (i) to (viii) of the preliminary elements listed in the above strategy represent tasks that are currently undertaken by the Secretariat to the extent feasible under its current human (one staff member) and financial resources (approximately US \$200,000 per biennium on illicit-trafficking- and Committee-related activities). Points (ix) to (xi) contain new proposals expressed by the Committee (Recommendation No. 3). Both strengthening of the currently undertaken elements of the strategy (i to viii) and integrating these new proposals (ix to xi) would imply the commitment of human and financial resources to be met within the regular programme and budget to ensure the resulting strengthened and/or new tasks for the Secretariat.

B. Consideration to include mediation and conciliation in the Committee's mandate

5. Members of the 171st Executive Board, and of the Committee at its thirteenth session, expressed support for the strategy and in particular the expansion of the mandate of the Committee to include mediation or conciliation among its functions. Mediation implies the intervention of an outside party to bring the concerned parties to a dispute together and assist them in reaching a solution, while under conciliation, the concerned parties agree to submit their dispute to a constituted organ for investigation and efforts to effect a settlement. In either case, the parties to the dispute must agree to participate in the mediation or conciliation exercise. Contrary to arbitration and judicial ruling, conciliation and mediation are not binding and not judicial means of dispute settlement. Terms of settlement recommended by the third party are not obligatory for the States concerned, as they may reject it and have recourse to other dispute settlement mechanisms in the spirit of Articles 2 (3) and 33 of the United Nations Charter.

6. Should the General Conference conclude that the mandate of the Committee be extended to include mediation and conciliation, the Statutes of the Committee must be amended to include the procedure of mediation and conciliation which requires the consent of the parties concerned.

7. Rules of procedure are necessary for mediation and conciliation to be operational. To this effect, should the General Conference decide to expand the mandate of the Committee to include mediation and conciliation, these functions should be added to the provisions of the Statutes of the Committee. Such a provision would be the basis for the Committee to adopt its own rules of procedure. To this end, the Secretariat submits to the General Conference a draft amendment to Article 4.1 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, for its consideration as follows:

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. **In this connection, the Committee may also submit proposals with a view to mediation or conciliation to the Member States concerned, being understood that mediation implies the intervention of an outside party to bring the concerned parties to a dispute together and assist them in reaching a solution, while under conciliation, the concerned parties agree to submit their dispute to a constituted organ for investigation and efforts to effect a settlement. For the exercise of the mediation and conciliation functions, the Committee may establish appropriate rules of procedure.**

8. In view of the above, the General Conference may wish to adopt the following Resolution:

The General Conference,

1. Recalling 32 C/Resolution 38 paragraph 9, which invited the Director-General “to present to the Executive Board at its 170th session a strategy to facilitate the restitution of stolen or illicitly exported cultural property by: (a) strengthening the mandate of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation, *inter alia* in terms of proposals of mediation and conciliation for Member States; (b) promoting the activities of the Committee in respect of awareness-raising at regional, subregional and national levels; (c) convening its sessions annually”,
2. Noting Recommendation No. 3 adopted by 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”) at its 13th session which addresses each point of 32 C/Resolution 38 paragraph 9,
3. Also recalling 171 EX/Decision 17 in which the Executive Board, after having examined the elements towards a strategy proposed by the Director-General, invited the Director-General to include in the provisional agenda of the 33rd session of the General Conference an item on the strategy,
4. Having examined document 33 C/46 and the proposed elements towards a strategy to facilitate the restitution of stolen or illicitly exported cultural property,
5. Having also examined the Statutes of the Committee, and the proposed amendment thereto,
6. Decides to endorse the consolidated elements towards a strategy to facilitate the restitution of stolen or illicitly exported cultural property as set out in document 33 C/46 and invites the Director-General to take the appropriate measures for its implementation;
7. Decides to amend the Statutes of the Committee so as to include mediation and conciliation.

ANNEX I

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION

Thirteenth Session

7-10 February 2005, Paris

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,

Considering Resolution 38 of the 32nd session of the UNESCO General Conference, inviting the Director-General *inter alia*, to present to the UNESCO Executive Board a strategy to facilitate the restitution of stolen or illicitly exported cultural property, and which in Paragraph 9 makes specific references to the mandate and functioning of *the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation*,

Noting that the Director-General felt that it would be more effective to have the Committee's observations on 32 C/Resolution 38 with a view to considering them when elaborating a strategy to submit to the 171st session of the Executive Board,

Recalling the current mandate and functioning of the Committee as set forth in the Statutes and Rules of Procedure of the Committee,

1. Invites the Director-General to take note of the following observations when elaborating a strategy to facilitate the restitution of stolen or illicitly exported cultural property pursuant to 32 C/Resolution 38:
 - A. The Committee is supportive of the proposition to strengthening its mandate, *inter alia* in terms of proposals of mediation and conciliation. While acknowledging that such procedures require the consent of both parties concerned to enter into the process, and are not binding on them, these tools can expand the role of the Committee and provide UNESCO Member States with more options from which to choose, without prejudice to still other means of resolving disputes concerning the return or restitution of cultural property.
 - B. The mediation or conciliation procedure can be initiated in one of two ways: either by the concerned parties following a recommendation by the Committee, or directly by the concerned parties.
 - C. The role of **mediator** may be conferred on one or more individuals, which the concerned parties choose, and could include but not be limited to any of the following:

- (i) a representative of one or more State(s) Member(s) of the Committee;
 - (ii) a qualified representative of the UNESCO Secretariat; or
 - (iii) an outside person(s), institution, or other body pre-selected by the Committee.
- D. Available, recognized models for settlement of disputes should be considered for useful characteristics that could be drawn from them if rules of conciliation specific to cases of return or restitution of cultural property are to be developed.
- E. The role of **conciliator** should be conferred on an individual or group of individuals chosen by the parties for that purpose, rather than on the Committee as a whole or the Secretariat.
- F. The mediation and conciliation procedures should be autonomous and not prejudice other like procedures. They should be conducted with confidentiality, transparency, and according to the general principles of fairness, impartiality, and good faith cooperation, and those of international cultural property law. The parties agreeing to this procedure should participate in a motivated, loyal, responsible manner and should equally share the responsibility of its success or lack thereof.
- G. The parties participating in a mediation or conciliation procedure should equally bear the costs thereof unless the services of the mediator or conciliator are provided on a voluntary basis, the costs are covered by another organization, or the parties make some other agreement on sharing costs.
- H. A time limit, beyond which the issue that has not been resolved will no longer be considered subject to conciliation and mediation, should not be set by the Committee. However, the body or individual conducting the mediation or conciliation procedure may, with the agreement of the parties involved, set a time limit for the specific procedure under way. The parties concerned shall report on the procedure to the following session of the Committee.
- I. Promotion of the activities of the Committee could be ensured by, *inter alia*:
- (i) Information dissemination (publications, websites and media exposure);
 - (ii) Publicizing eventual use and success of the International Fund of the Committee;
 - (iii) Hosting an international conference on return and restitution difficulties and solutions (if funds are made available);
 - (iv) Developing regional frameworks to guide the organization of national and regional seminars in the field of return and restitution of or illicit trafficking in cultural property;
 - (v) Developing a communications strategy to raise the attention of the media and the public at large and engage them in a proactive manner.
- J. With respect to mandatory annual sessions of the Committee, no clear preference was expressed.

ANNEX II

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*

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 UNESCO¹ 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.

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.

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; [Proposed new additional text: **In this connection, the Committee may also submit proposals with a view to mediation or conciliation to the Member States concerned, being understood that mediation implies the intervention of an outside party to bring the concerned parties to a dispute together and assist them in reaching a solution, while under conciliation, the concerned parties agree to submit their dispute to a constituted organ for investigation and efforts to effect a settlement. For the exercise of the mediations and conciliation functions, the Committee may establish appropriate rules of procedure**].
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.

² Resolution of the twenty-third session of the General Conference of UNESCO, adopted on 4 November 1985.

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

1. 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.
2. 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.