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

SUMMARY

The General Conference, by resolution 4/7.6/5 adopted at its twentieth session, approved 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.

The Committee submits this report on its work to the General Conference, in accordance with Article 4, paragraph 8, of its Statutes.

I. INTRODUCTION

1. The first 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 (here after referred to as "the Committee") was held at Unesco Headquarters in Paris from 5 to 9 May 1980. Of the 20 States which are members of the Committee, 19 were represented. Furthermore, 37 Member States of Unesco, together with the Holy See, were represented by observers. Observers from three intergovernmental organizations and from four international non-governmental organizations also took part in the work of the Committee.
2. In accordance with Article 10 (1) of its Statutes, the Secretariat of the Committee was provided by the Unesco Secretariat.

II. OPENING OF THE SESSION

3. The proceedings of the Committee were opened by the Director-General of Unesco. After welcoming participants, the Director-General described the task that has been assigned to the Committee, which consists primarily of making it possible for countries whose cultural heritage has been dispersed to assemble representative collections of this heritage through the return of at least some of the works that have been lost. The latter not only bore witness to the skill of their authors but also symbolized all the impulses through which a nation was formed and its culture expressed. In losing these works, these countries were dispossessed not merely of a material heritage, but of the bonds which link today's generations with those of bygone days, of certain forms which enable them to grasp their identity and position in relation to others. More than ever these countries needed at least some of these works in a world where the trend towards the standardization of modes of production and life-styles encourages communities and nations to seek in their common roots the life-giving sources of their collective personality. The Director-General concluded by stressing that the concrete response that will be given to this legitimate aspiration would not only represent an act of equity but would also be a sign of mutual respect and a token of the desire for mutual understanding among peoples in a spirit of justice and solidarity.

III. ELECTION OF THE BUREAU AND ADOPTION OF THE RULES OF PROCEDURE

4. The Committee unanimously elected Mr. Salah Stétié, delegate of Lebanon, as Chairman of the Committee.
5. The Committee adopted its rules of procedure.
6. By an unanimous vote, the Committee elected as Vice-Chairmen, the delegates of France, Pakistan, Senegal and Yugoslavia, and as Rapporteur, Mrs. Marta Arjona Perez, delegate of Cuba.
7. The Committee approved the invitation to take part in the present session which had been sent to certain international governmental and non-governmental organizations outside the United Nations system.

IV. ADOPTION OF THE AGENDA

8. The Committee adopted its agenda as set out in document CC-79/CONF.206/1.

V. QUESTIONS CONCERNING THE IMPLEMENTATION OF THE COMMITTEE'S TERMS OF REFERENCE (document CC-79/CONF.206/7)

(A) PROMOTION OF INTERNATIONAL CO-OPERATION TO FURTHER THE RETURN OF CULTURAL PROPERTY

(i) General discussion

9. The representative of the Director-General provided a brief survey of the action taken by Unesco in this field. In order to foster the research necessary for building up national collections, in countries which have lost a substantial part of their cultural heritage, studies have been carried out in three countries: these case studies were conducted by the relevant authorities

in these countries in collaboration with the International Council of Museums. Document CC-79/206/5 presented the Committee with information collated so far in regard to the current state of collections, their lacunae and the related causes, the status of museums and the museum staff available. Activities aimed at fostering a favourable climate of public opinion for the restitution of cultural property to its countries of origin have been intensified and have aroused considerable interest among journalists from all the media. The programme proposals for 1981-1983 provide, on the one hand, for technical co-operation to be supplied to the States concerned with a view to assembling representative collections of their cultural heritage and, on the other hand, the continuation of information activities. He went on to say that the Committee was requested not only to define its own basis for action, but also to put forward guidelines to the Secretariat for future action.

10. The actual purposes and scope of the Committee's terms of reference were the subject of a very broad discussion aimed essentially at defining the conceptual and methodological context for its future action. Due emphasis was placed on the ethical nature of this action and accordingly on the value of a widely held spirit of goodwill and solidarity to ensure success.

11. With regard to the scope of the notion of cultural property "which has a fundamental significance from the point of view of the spiritual values and cultural heritage of a people", several participants referred to the misleading connotations to be found in the term "fundamental". The term could, in actual fact, be interpreted very differently by different people. After the matter had been discussed, the Committee decided that the term referred to property which was particularly representative of the cultural identity of a given nation. As regards the notion of "country of origin", the Committee felt that the term meant the country with the traditional culture to which the object was related.

12. Similarly, there were differing views expressed on the time-limits within which a request for the return or restitution of cultural property lost as a result of foreign occupation or illicit appropriation could be made. Rather than a disagreement on substance, this discussion revealed differences in interpretation related to the historical conditions specific to the countries concerned. The Committee reached the conclusion that for a considerable number of countries it was not possible to specify a time-limit for a request for return of any given cultural property.

13. As regards the working methods of the Committee, several participants believed that every effort should be made to ensure that they were as broad and as closely related to professional considerations as possible. Several speakers stressed the need for co-operation on a regional basis, especially for arousing national awareness. The Committee should become the driving force behind co-operation to be sought not only in the national or regional focus but also in the much broader outlook of the whole of mankind.

14. The Committee felt it necessary to go beyond the mere framework of its Statutes and lay down some kind of code of ethics, without which no results could be achieved, and place the objective of the return of cultural property in its true context, namely that of maintaining, reconstructing, developing and serving the cultural identity of all peoples. To achieve this, it was thought indispensable that technical and legal structures be established and that research be fostered so as to ensure judicious use of cultural property for the benefit of the greatest number of people.

(ii) The compiling of inventories

15. Several delegates and observers brought up the question of inventories of cultural property, stressing the fundamental importance of such instruments, both for preparing requests for the return of cultural property and for encouraging possible offers. The inventories should include both the cultural property still remaining within the territory of the country requesting the return of property and the goods originating from the country which are currently being held abroad. Due emphasis was also placed on the need to draw up an inventory of requirements in terms of museum facilities together with a survey of the means which developed countries could put at the disposal of other nations. Given the breadth of such a task, the wish was expressed that these inventories should be drawn up in collaboration with a number of relevant organizations, especially the International Council of Museums (ICOM), through the use of their documentation centres. The ICOM representative approved this suggestion but stressed that the ICOM documentation centre could only undertake such work if adequate financial resources were put at its disposal.

(iii) The fight against the illicit traffic in cultural property

16. The illicit traffic in cultural property as a permanent cause of impoverishment of the cultural heritage of all nations repeatedly held the attention of the Committee. Several delegates expressed the wish that the "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property" (1970) be more widely applied and that the ratification of the Convention be encouraged by the Committee. One delegate expressed surprise that certain major developed countries have not yet ratified the Convention. Several participants drew attention to certain aspects of national or regional legislation which might hinder such ratification. The Committee considered that, in any case, every possible measure should be taken at national level for restricting illicit traffic, such as ensuring adequate supervision of the marketing channels through which cultural property is handled.

(iv) Procedure for requests for the return or restitution of cultural property

17. Several participants spoke of the question of the procedure for dealing with requests for the return or restitution of cultural property. With regard to the drafting of these requests, a number of speakers stressed the need for providing as much information as possible for supporting the requests and that these should be brought to the attention not only of the States concerned but also of the States members of the Committee. The time-limit for the reception of replies should be very clearly specified. An observer suggested that the three following questions should be asked of any State to which a request is sent: Does the State accept the facts as summarized in the request? Is it ready to enter into bilateral negotiations with regard to the property involved and in what manner? Does it have any other observations to make?

18. The Chairman advocated the drafting of a form for a request for the return of cultural property which, given the complexity of such matters, would not omit any aspect which might otherwise hinder the restitution or return of property. There proved to be considerable support for this suggestion and the Committee decided that a draft form will be drawn up by the Secretariat with the assistance of the ICOM and the Chairman. The draft will be sent to all Member States of Unesco for comment. The Secretariat will collate the various opinions expressed and draw up a revised version of the form which will be submitted for examination and adoption by the Committee at its next session. Until then, requests may continue to be sent to the Director-General. The form should allow for the point of view of the requesting country to be expressed as well as that of the country possessing the property. It should provide precise questions on the conditions of protection and the significance of the object in the requesting country. The form as such should constitute a starting-point for further more detailed information. Both the requesting country and the possessing country may provide additional documents and information as specified by the draft form.

19. The Committee took note of the Secretariat's explanations with regard to time-limits for the translation and distribution in several languages of documents of this kind. It was also pointed out that adequate time had to be allowed for replies from the countries concerned. A period of one year would seem to be reasonable for the country possessing the requested object to be able to examine all the aspects of the question and reply accordingly. Suitable bilateral contacts should be made during this particular period of time. Beyond this time-limit, the requesting country could ask for an *ad hoc* committee to be set up, which would include, in addition to the two countries concerned by the request, the Bureau of the Committee and representatives of the Secretariat and of ICOM.

20. Two instances were brought to the attention of the Committee which both illustrated certain legal, technical and practical problems with which the Committee might be faced. They show the need for a flexible approach, in view of the fact that, in such matters, observance of fixed general rules would be inappropriate. For example, the Government of the Democratic Socialist Republic of Sri Lanka put forward a request for the return of cultural property located within the territory of certain foreign countries (document CC-79/CONF.206/6). As the request was not presented within the time-limit stipulated by the Rules of Procedure and could not therefore be added to the agenda for this session, the Committee took note of the problems evoked and decided that the documentation concerning this request would be sent to the Member States concerned for examination. It expressed the wish that the States involved should contact each other and that the results of the negotiations be communicated at the next session of the Committee. The Government of Ecuador also requested the restitution of a major collection of archaeological objects which have reportedly been illegally exported from its territory and are currently in the possession of a private collector in Italy. As the Ecuadorian authorities have referred the matter to the Italian judicial authorities, it would seem difficult for the Italian Government to intervene at this stage, but in view of the statements made by the representatives of the two Member States concerned, the Committee asked that the negotiations that had been opened should be pursued.

(B) SETTING UP OF AN INTERNATIONAL FUND TO ASSIST IN EFFECTING THE RETURN OF CULTURAL PROPERTY

21. The representative of the Director-General introduced the section of working document CC-79/CONF.206/7 relating to this question by underlining that during the examination of the Statutes of the Committee by the General Conference at its twentieth session, several delegates expressed the opinion that the creation of a Special Fund would be desirable. Previously, in a study conducted in August 1977, ICOM had advocated the creation of such a Fund as an instrument of action for the Committee. The Fund, whose creation would have to be approved by the relevant organs of Unesco, could facilitate the Committee's task by enabling it to finance: (a) studies aimed at assembling complete collections; (b) technical co-operation activities (experts, grants or equipment); (c) information activities for the general public; and (d) in certain circumstances, return or restitution operations (by covering the cost of transport and insurance, for example).

22. A number of delegates and observers expressed reservations as to the appropriateness of creating a Fund of this kind, in view of the variety of funds already existing within Unesco and current economic circumstances. Other reasons of a psychological nature were also put forward, such as the reactions of certain States which would be called upon, at one and the same time, to return cultural property and to finance the costs incurred directly or indirectly by such restitution. According to this point of view, it would be more effective to leave the States free to contribute aid within the context of bilateral or multilateral co-operation. The budgetary resources of Unesco devoted to the return of cultural property ought to be strengthened rather than creating a Fund whose means of action would be very uncertain.

23. Other participants, on the contrary, believed that the creation of a Fund was necessary for financing the large-scale activities which had to be undertaken in this field. Past experience had shown how useful funds of this kind were. Had it not been for the International Fund for safeguarding the Monuments of Nubia, for instance, the major project work carried out up to now would not have been possible. In actual fact, every one of the existing funds has its own specific objective.

24. The representative of the Director-General, in answer to a question, stated that among the four types of activity which the Fund could possibly finance, the first three could be considered to be conventional assistance measures lying within the scope of Unesco's ordinary budget (a sum of \$143,000 has been proposed for this purpose, supplemented by Participation Programme funds which could also be used for these types of activity). As regards the fourth type of activity contemplated (meeting the cost of transport and insurance), however, new resources would considerably improve the situation.

25. While underlining the value of such a Fund, the ICOM observer recommended the creation of a data bank for documentation. He added that if priority were to be given to certain types of action, then "training" deserved to rank high on the list.

26. Given the diversity of opinions expressed, the Committee decided that it was not possible to make a recommendation with regard to the creation of a Fund for the return of cultural property, the timeliness of which would be examined by the General Conference.

(C) MEANS OF STIMULATING PUBLIC INFORMATION ACTIVITIES

27. The representative of the Director-General introduced the section of document CC-79/CONF.206/7 relating to this question by indicating the activities undertaken and planned by Unesco for creating a current of public opinion in favour of the return of cultural property to its countries of origin. Several speakers stressed the value of this particular effort. Suggestions were made for activities such as the organizing of an international information day or the issuing of stamps on this particular theme. It was stressed that informing the public should not only be done at the international level but also in the countries requesting the return of cultural property, so as to make national public opinion more aware of the value of the goods concerned for the cultural identity of the country. In turn, public opinion in countries possessing cultural goods from other countries ought to be made more conscious of the spiritual significance which some of these objects have for the populations of the countries of origin. The attention of the general public should, be drawn, first and foremost, to the harm caused by the illicit traffic in cultural objects.

(D) COMPENSATION

28. The Peruvian delegate, while presenting the "compensation" system which he proposed in documents CC-79/CONF.206/3 and CC-79/CONF.206/3 Addendum, stated that his delegation,

although it considered that the principle of the restitution or return of cultural goods remained the fundamental question, viewed compensation only as an alternative solution which might replace the return or restitution of cultural goods only in certain specific cases and with the agreement of both parties concerned.

29. The Peruvian delegate's proposal was supported by a number of delegates and observers.

Other participants, however, stressed that to accept the principle of compensation would inevitably undermine the principle of return or restitution. Some felt that the concept of compensation was likely to appear unacceptable to many States as it evoked the notion of reparation. Furthermore, such a system suggested the idea of a commercial transaction and the material evaluation of objects, whereas it was their cultural significance which mattered. In the opinion of these participants, the principle of compensation could only be upheld in the single instance where an object on loan had been damaged. Nevertheless, there was no reason for preventing Peru, if it so wished, from resorting to a system of exchange for obtaining cultural objects of another origin, but the principle should not be accepted within the terms of reference of the Committee.

30. The Peruvian delegate took the floor once again so as to specify that the compensation system which he proposed would only be an accessory measure, complementary to the principle of return or restitution. It could be resorted to in cases where the return or restitution was not feasible as, for example, when legal barriers could not be overcome. To all intents and purposes, the agreement of both parties concerned would always be required before compensation could be resorted to. The system of exchange referred to by some participants could not provide a solution to the Peruvian problem and could not replace compensation, as exchange would presuppose that both operations were simultaneous. As the objects to which Peru was laying a claim had already been exported, compensation could be considered to be an exchange conducted in two stages.

31. At the end of the discussion, the Committee stated that it had a duty first and foremost to deal with requests for restitution or return from countries which had been deprived of their cultural property and which need it for assembling a representative collection of their cultural heritage. The Committee consequently decided to establish its action, for the time being, exclusively on the principle of the return or restitution of cultural property and to postpone a possible study of a system of compensatory exchanges as an accessory solution.

32. The Mexican delegate proposed that an invitation be sent to the Member States of Unesco requesting them to restitute voluntarily and at their own initiative a number of cultural goods of foreign origin located in their museums and similar institutions. He further pointed out that this proposal would also be the subject of a resolution that the Mexican delegation would be submitting at the next session of the General Conference.

(E) RECOMMENDATIONS OF THE COMMITTEE

33. Given the breadth and the complexity of the discussion, the Committee decided to set up an ad hoc subcommittee to elucidate the salient points of the discussion in the form of recommendations for future action to be taken in the field of the restitution or return of cultural property. The subcommittee was composed of seven States members of the Committee (Belgium, Egypt, Ethiopia, France, Malaysia, Mexico and Nigeria) and of eight Member States of Unesco, but not members of the Committee (Algeria, Federal Republic of Germany, Ghana, Honduras, Italy, Sri Lanka, Suriname and the United Kingdom). The ICOM observer also took part in the work of the subcommittee.

34. The recommendations of the subcommittee were examined during the last session of the Committee. The text of the recommendations, as amended and adopted by the Committee, is given below:

- (i) The Committee considers it essential and urgent that each country seeking to build up representative collections of its cultural heritage should prepare a systematic inventory of the cultural property still on its territory and of property in other countries. The preparation of such inventories could be undertaken in collaboration with the competent non-governmental organizations, more particularly ICOM, and with technical co-operation from Unesco, under the Participation Programme or any other programme allowing for such co-operation. These inventories should make it possible to identify any missing property as well as the property referred to in Article 3 of the Statutes, with a view to taking steps to secure its return or restitution.

The Committee invites all countries which have the means of preparing such inventories to participate in bilateral or multilateral co-operation with a view to establishing them.

- (ii) The Committee, deeply concerned at the persistent illicit traffic in cultural property, which continues to impoverish the cultural heritage of all nations, considers that each State should take urgent measures to put an end to such illicit transfer. National legislation on the subject should be strengthened and States which have not yet done so should ratify the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970). Customs regulations and control should be reinforced. Special police services should be established. Art dealers should be subject to control. The Committee recommends that the Secretariat continue to co-operate with all international governmental and non-governmental organizations which may contribute to the fight against illicit traffic.
- (iii) The Committee considers that, in order to create the climate of mutual understanding and international solidarity essential for the achievement of its objectives, public information campaigns should be conducted, firstly in the countries calling for the return or restitution of cultural property, so that the whole population may realize the importance of protecting and preserving its artistic and historical heritage; and secondly in the countries to which requests are addressed, so as to make clear the justification for such requests and to dissipate any misunderstandings still existing on this subject. Educational and cultural institutions should be associated in this action.
- (iv) The Committee considers it necessary to establish a standard form for recording information relating to requests for the return or restitution of cultural property and for the observations made by the Member States to which such requests are addressed. A draft form should be prepared by the Secretariat, submitted to the members of the Committee for approval and distributed to all Member States and Associate Members of Unesco. The final draft of the form would be adopted by the Committee at its second session, when the Committee will also decide on the procedure for its use.
- (v) The Committee recommends that when an offer or a request concerning the return or restitution of cultural property is the object of bilateral contacts the States concerned should inform, as rapidly as possible and through the Secretariat, the members of the Committee, as well as any other Member State concerned, of the progress made.
- (vi) In view of the relative scarcity of possible funding in the field of museum development, the Committee expresses the wish that all forms of co-operation be co-ordinated by the Member States concerned for strengthening national capacity (expert field trips, training of specialized personnel, supply of equipment, etc.) in order to obtain maximum impact with regard to adequate material, technical and legal facilities for reception.
- (vii) The Committee takes note of the proposals of the Director-General for promoting the return or restitution of cultural property to its countries of origin as set out in draft document 21 C/5 and, in the light of Article 4.5 of its terms of reference, endorses these proposals.

(F) DATE AND PLACE OF THE SECOND SESSION OF THE COMMITTEE

35. The Committee decided that its next session will take place in September 1981 in Paris, at Unesco Headquarters, and requests that invitations be sent to the international organizations listed in Annex I to this report.

(G) REPORT OF THE WORK OF THE COMMITTEE

36. The Committee decided, in accordance with Article 9 of its rules of procedure, that the report on its work will be prepared by the Rapporteur with the assistance of the Secretariat. It will be submitted to the Chairman for approval and sent to the General Conference at its next session.

37. The first session of the Committee ended on 9 May 1980.

ANNEX I

List of international organizations (outside the United Nations system)
to be invited to meetings of "The Intergovernmental Committee for promoting the
return of cultural property to its countries of origin or its restitution
in case of illicit appropriation"

African Cultural Institute
Agency for Cultural and Technical Co-operation
Arab Educational, Cultural and Scientific Organization
Commission of the European Communities
Commonwealth Secretariat
Council for Mutual Economic Assistance
Council of Europe
Customs Co-operation Council
International African Institute
International Association of Art
International Association of Art Critics
International Centre for the Study of the Preservation and Restoration of
Cultural Property
International Confederation of Art Dealers
International Council for Philosophy and Humanistic Studies
International Council of Monuments and Sites
International Council of Museums
International Council on Archives
International Institute for the Unification of Private Law
Interpol (International Criminal Police Organization)
Organization for Museums, Monuments and Sites in Africa
Organization of African Unity
Organization of American States
Society of African Culture
South-East Asian Ministers of Education Organization
World Tourism Organization