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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**

Fifteenth session

Paris, UNESCO Headquarters, 11-13 May 2009

**STRATEGY PROPOSALS
FOR THE FUTURE WORK OF THE COMMITTEE**

INTRODUCTION

1. At the end of the extraordinary 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, held in Seoul from 25 to 28 November 2008 at the invitation of the Republic of Korea, the members of the Committee adopted several recommendations on the role of the Committee.¹ Two of those recommendations stress in particular the need to strengthen the Committee's role as a facilitator in negotiations concerning requests for the return or restitution of cultural property, and invite the Director-General of UNESCO "to include an item in the agenda of the Committee's fifteenth ordinary session concerning a strategy for the future work of the Committee, within the framework of its mandate, and to prepare a document to that end".

2. This document seeks to provide the members of the Committee with material for consideration drawn from the main points of the discussions between experts and members of the Committee during the extraordinary session, with the aim of assisting them to formulate a strategy for the future work of the Committee.

I. Frequency of the Committee's meetings

3. In the course of the discussions at Seoul, the participants recognized the Committee's importance as a platform for the exchange of experience in regard to the prevention of illicit trafficking of cultural property; dialogue between States, and greater awareness of the issue on the part of UNESCO's IGO and NGO partners. In this regard, those participating in the extraordinary session appealed to the intergovernmental body to play an increasing role at international level in view of the growing interest worldwide in issues connected with the trafficking and the return and restitution of cultural property. The members of the Committee thus discussed the proposal of the

¹ See Annex 3 of document CLT-2009/CONF.212/COM.15/2.

representative of the United States of America who wished the Committee's ordinary sessions to be held annually.

4. Under Rule 2.1 of the Committee's Rules of Procedure, the Committee "shall hold ordinary plenary sessions at least once and not more than twice every two years"; Article 5 of the Statutes contains a similar provision. Consequently, there is nothing to prevent the 22 members of the Committee from convening every year if they so decide and if so required by an agenda. However, since it was established, the Committee has always met on a biennial basis and the extraordinary session, held at Seoul in pursuance of Rule 2.4 of the Rules of Procedure and Article 5 of the Statutes, was the first in 30 years of operation.

5. Moreover, in present conditions, an annual meeting of the Committee could only be held with recourse to extrabudgetary funding since the regular budget of UNESCO does not permit meetings to be held with such frequency for the time being.

6. On the other hand, the members of the Committee and the other Member States and Associate Members of UNESCO could prefer to keep Committee meetings on a biennial basis and, pursuant to Rule 2.5 of the Rules of Procedure, like the Republic of Korea, consider the possibility of organizing and hosting extraordinary sessions more frequently.

II. Relations with the art market and codes of ethics

7. In 1999 the Committee produced the International Code of Ethics for Dealers in Cultural Property (inspired by the code of the International Confederation of Art Dealers – CINOA). This tool is not sufficiently well known to or respected by art dealers and the art market as the confederations of antique dealers and auction houses have also acquired their own code of professional ethics. Through the Committee and the States, taking account of the recommendation to depart from the wholly intergovernmental framework and work more with the art market, museums, private experts and civil society, it is proposed that this text should be the subject of a further campaign of promotion. The Committee should also compile a register of the dealers in cultural property who make effective use of the code worldwide and note their critical remarks in this respect, with a view to updating it if need be.

8. It has been noted that, in general, museums are increasingly scrupulous in observing codes of ethics, particularly the ICOM code, and more attentive to the principles and problems involved in the acquisition of works of unknown provenance. A code of ethics for collectors could also be drawn up in the same way, complementing the ICOM code. Such a specific code could, in part, be based, for example, on the 1995 UNIDROIT Convention and be actively promoted.

III. Awareness-building and information

9. During the extraordinary session at Seoul unanimous support was expressed for promoting more extensively among States, the art market and the public an awareness of the scourge of illicit trafficking in cultural property. The experts emphasized the importance of including civil society and television channels in awareness campaigns, as well as the clergy, in the case of religious property, and of mobilizing Internet users for operations to buy back cultural property, and so on.

10. Furthermore, since, among the duties assigned to it by Article 4 of its Statutes, the Committee is responsible for "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", the Secretariat has prepared, with the assistance of Professor Lyndel V. Prott, a volume of some 350 pages illustrating the diversity of opinions, the variety of the types of heritage concerned and the different aspects of the question of the return of cultural property, from the historical, ethical, philosophical and legal viewpoint. It is thus proposed that the States members of the Committee and observer States should support the translation of this scientific tool into languages other than

English and should contribute to its printing and distribution by means of technical and financial resources additional to those of the Secretariat.

11. In the context of the Committee's thirtieth anniversary and of the fortieth and fifteenth anniversaries respectively of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, UNESCO proposes raising international public awareness, in particular that of tourists and travellers, of its action to prevent illicit trafficking in cultural property by means of a short film presenting its activities and those of its partners. The Organization is also appealing for the support of Member States with a view to the design and production of video clips alerting the public, for transmission in airports and aircraft, through tour operators and on world heritage tourism sites.

IV. Draft articles for model law

12. One of the main discussions at Seoul concerned the preparation of articles of a model law for the protection of cultural property against illicit trafficking, to complement the legislation database (which could also provide analyses of the legislation it presents). This model would be offered to States by way of example for their own legislation and adapted by them in accordance with their legal tradition. It should clearly lay down the principle of State ownership of cultural property, particularly archaeological property. The aim is to ensure that all States are "equipped" with sufficiently explicit legal principles that guarantee such ownership and may be invoked during legal proceedings between two States or between a State and a foreign private entity concerning claims to cultural property.

13. In response to the suggestions made at Seoul, UNESCO has proposed examining with UNIDROIT the possibility of preparing jointly a model law following procedures to be determined, drawing on existing models (UNCITRAL, the work of the International Law Association, ALECSO and ISESCO, etc.). This question will be put before the Governing Council of UNIDROIT in April 2009. However, the adoption of a law of this sort goes along with ratification of the Conventions of 1970 and 1995,² essential legal stages that States wishing to combat effectively the trafficking of cultural property must complete. In this perspective such a law would enable these international instruments to be more effectively applied.

14. Moreover, the following questions must be asked if such a project is to be successfully completed:

- Does the preparation of model law articles correspond to a real need and to a demand from governments, international organizations and the private sector that requires a specific and innovative legal response?
- Does this initiative duplicate action already undertaken or under way?
- Is this project being called for and is it supported by a large number of States, particularly developing States, demonstrating a sufficiently strong interest in this subject?
- What human and financial resources are necessary?
- How much time is needed for the project to be completed?

² To this effect the participants in the extraordinary session at Seoul pressed for fresh impetus to be given to the promotion of the UNIDROIT Convention, with a view to securing wider ratification.

V. Alternative methods of non-judicial conflict resolution

15. Aside from bilateral methods of conflict resolution (restitution pure and simple, for example), States also rely on organizations like UNESCO to facilitate, through diplomacy and intergovernmental dialogue, the settlement of conflicts involving cultural property. The Committee could thus compile an inventory of all of the alternative methods of resolving such conflicts, building on the work done by research bodies and centres such as ICCROM and ICOM, the Permanent Court of Arbitration, the Committee on Cultural Heritage Law of the International Law Association, the Geneva Art-Law Centre and the cultural heritage research centre (CECOJI-CNRS/Université Paris 11) which could cooperate with UNESCO or are already doing so. These alternative methods would then be made available to States, together with model agreements, directly on the UNESCO Internet site.

16. To this effect the Secretariat has asked two academics – Marie Cornu, Research Director at CNRS, and Marc-André Renold, Professor of the Law Faculty of the University of Geneva – to present to the members of the Committee and to observers the outcome of the research which they are currently undertaking on alternative methods for the settlement of disputes and the restitution of cultural property. Both have already given several lectures on this topic and are co-authors of an article which will be appearing on this subject in the second quarter of 2009 in the *Journal du Droit International* (Clunet). A copy of this study will be presented to the participants in the fifteenth session of the Committee.

VI. Mediation and conciliation

17. The experts who met at Seoul considered that adoption of the draft rules of procedure on mediation and conciliation was an excellent way of strengthening the Committee and developing the range of tools available to States in order to settle their problems. It also enabled disputes to be settled quickly. Some experts wanted the rules to be suitable for use by museums as well and suggested drawing on the work of the United Nations or WIPO in that regard. Several reservations were nonetheless voiced.

- The confidentiality clause applicable in mediation which is itself a guarantee of success (appreciated in particular by private collectors) should not be duplicated;
- The cost of mediation and conciliation procedures should not be left out of account;
- A mediation and conciliation procedure is always subject to acceptance by the two parties;
- It must be clearly established who is to perform the role of mediator (UNESCO Secretariat, a third State, a third person acting free of charge...);
- Lastly, should not the Committee decide merely to act as a facilitator?

18. In this regard the survey being carried out by the Secretariat to gather the comments of States on these draft rules will be most useful (see on this point the Secretariat report CLT-2009/CONF.212/COM.15/2, the consolidated draft rules CLT-2009/CONF.212/COM.15/1 and the comments provided by the Office of International Standards and Legal Affairs).

VII. Major international principles relating to the protection of cultural property

19. During the discussions at the extraordinary session, several experts referred to the existence and development of legal and moral principles applicable to heritage protection and the return and restitution of cultural property, such as the principles of non-spoliation of a country's cultural property, the integrity of cultural property, the moral obligation of restitution, the right to self-determination, the protection of the cultural rights of minorities, restitution in reparation for a

violation of human rights, reconsideration of the principle of inalienability of public collections, etc. In this connection, it was suggested that UNESCO should make an inventory of these major principles and trace their development and also the instruments in which they are contained. With the aid of an in-depth study carried out by Professor Tullio Scovazzi of the University of Milan, to be presented at the Committee's fifteenth session, it is proposed that the members of the Committee should pursue the analysis of these principles and evaluate the extent to which they can help to facilitate discussions concerning the return and restitution of cultural property.

VIII. Simplification of the standard form concerning requests for return or restitution

20. The form, established in 1981 and revised in 1986, is for the use of States requesting the Committee's intervention to obtain the restitution of property of particular cultural significance. This 15-page document is generally considered to be much too long and detailed and to constitute an obstacle to the use of the Committee by States in order to facilitate procedures for the restitution of cultural property. At its next few session, the Committee should accordingly consider simplifying its procedures and tools available to States in order to satisfy more fully the terms of reference assigned to it in Article 4.2 of its Statutes.