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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*

**DRAFT RULES OF PROCEDURE ON MEDIATION AND CONCILIATION**

This document is in two parts:

- The first part contains the comments and amendments received from Member States in the consultation organized by the Secretariat based on:
  - the preliminary document examined (and amended in the case of articles 1 and 2) at the 14th session of the Committee;
  - the observations and amendments of UNESCO's Office of International Standards and Legal Affairs;
- The second part contains a consolidated text of the rules of procedure, as proposed by the Secretariat and drawn up on the basis of observations and amendments received from the Office of International Standards and Legal Affairs and a number of States.
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## **FIRST PART**

### **Comments and amendments received from Member States**

#### **in the consultation organized by the Secretariat**

➤ As at 15 April 2009, the Secretariat had received comments and amendments relating to the draft rules of procedure on mediation and conciliation from the following countries:

- Benin
- Canada
- Italy
- Japan
- Czech Republic
- United Kingdom
- Turkey

➤ The following three States approved unreservedly the amendments proposed at the 14th session of the Committee and the comments made by UNESCO's Office of International Standards and Legal Affairs:

- Saudi Arabia
- Kuwait
- Syrian Arab Republic.

## **GENERAL OBSERVATIONS**

### **Japan**

#### **1. Parties (Article 4)**

With regard to parties to a mediation or conciliation procedure, recognizing entities other than States as parties would complicate the eligibility criterion for becoming parties as well as its recognition, and may also cause an abuse of the procedure. Therefore, parties to a mediation or conciliation procedure should be limited to States.

From this point of view, Japan cannot agree with the proposition of the Office of International Standards and Legal Affairs (LA) concerning Article 4 Paragraph 2.

#### **2. Commencement of a Mediation or Conciliation Procedure (Article 6)**

Both in mediation and conciliation procedures, the consent of the concerned Parties should be a prerequisite for starting the procedure. In this regard, though the Article 6 Paragraph 1 stipulates that one of the concerned parties may unilaterally submit a request to initiate a mediation or conciliation procedure, Japan considers that it should be changed to a text stipulating that a request for initiating a mediation or conciliation procedure could only be submitted with the consent of the concerned Parties.

#### **3. Confidentiality**

In several Articles, both confidentiality and transparency are jointly described as if they are principles of conducts in a mediation or conciliation procedure. In this regard, Article 9 stipulates the obligation of parties to report on the state of progress of the procedure to the Committee, and Article 10 Paragraph 2 stipulates the obligation of parties to inform the Director-General of UNESCO and the Members of the Committee, through the Chairman of the Committee, of any result of mediation or conciliation.

In this connection, as an example, Article 7 of Annex V of the United Nations Convention on the Law of the Sea stipulates that the conciliation commission shall report to the Secretary-General of the United Nations on any agreements reached or failing agreement, as well as the related conclusions and recommendations of the conciliation commission. However, the above-mentioned article only envisages that the report of the conciliation commission shall be transmitted from the Secretary-General to the parties concerned to the dispute, and it does not envisage informing widely not only the concerned parties, but also other States of the state of the procedure, or any other result. On the contrary, the obligation of reporting stipulated in Article 9 and Article 10 Paragraph 2 does not clearly define any destination or range of reports.

Since the issues related to the return of cultural property contain various requests for its return, as well as various backgrounds, we cannot exclude the possibility that some issues would be unnecessarily politicized if the state of the procedure, or any result of it, is unnecessarily made public. In order that disputes, which should essentially be solved by negotiations among the concerned States, be effectively solved among the concerned States through procedures such as mediation or conciliation, it is important that consultations during a mediation or conciliation procedure, as well as any concrete results, be treated confidentially so as to protect the positions and pretension of concerned parties. From this point of view, the principle of confidentiality should be rather a fundamental principle, and the obligation of reporting stipulated in the draft rules of procedure should be cautiously examined taking into account its

necessity as well as the way of stipulating (what extent of matters should be included in the report, how to treat the reports, etc.).

#### **4. Definition and Uniformity of terms**

The definitions of the terms which often appear in the draft rules of procedure are not clear, and their expression is not standardized. As for the terms of which expression is not standardized, it is necessary to clarify whether it is simply not standardized, or if it is not standardized because of different possible definitions. For example, terms such as “Mediator”, “Conciliator” and “Party” are capitalized without any definition. In addition, singular form and plural form are mixed without any explanation (ex. a Mediator/the Mediator(s), Parties/each party/the party/either party/both Parties/Parties concerned). Therefore, each term should be clarified at the beginning of the text, for example with a precise definition (ex. mediator chosen in accordance with the related provisions hereof (hereinafter referred to as “Mediator”)).

**Article 1. Scope and Nature of the Rules of Procedures for Mediation and Conciliation**

1. In accordance with 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 (hereinafter the "Statutes" and "the "Committee"), any<sup>1</sup> requests for the return or restitution of cultural property, as defined under Article 3 of the Statutes, which are submitted to the Committee, may also be dealt with under a mediation or a conciliation procedure if the parties agree to submit it through such a procedure.

2. The rules contained herein apply both to mediation and to conciliation procedures before the Committee. They apply to a procedure unless both of the Parties agree to amend or exclude them before or during the procedure.

**Benin:**

▪ **Comment**

It would be better to place this article after those covering the initiation of a mediation or conciliation procedure (currently Article 6) and the appointment of the mediator or conciliator (currently Article 7). This article would then become Article 3.

• **Amendment: paragraph 1**

*"... may ~~also~~ be dealt with under either a mediation or a conciliation procedure..."*.  
(The word "also" is deleted as no other term of comparison has been mentioned).

• **Amendment: paragraph 2**

It would be preferable to use the phrase "in the mediation/conciliation procedure" in the singular because the plural refers to the civil procedure and criminal procedure codes.

Furthermore, this would provide greater consistency with the ensuing provisions (including Article 2 which refers to "the process of mediation").

<sup>1</sup>

Insertions (underlined) that are located in the boxes are those proposed during the 14th session of the Committee in June 2007.

**Article 2. Nature of the Procedures and Roles of the Mediator and of the Conciliator**

1. The process of mediation is to bring the Parties of a dispute to a discussion and to assist them in reaching a solution.

2. A mediation procedure shall require the involvement of one or more individuals who shall act as mediators, chosen by the Parties concerned and may include, but not be limited to, any of the following:

- (a) a representative of one or more Member States of UNESCO;
- (b) an outside person(s), or representative of an institution or other body pre-selected by the Committee, qualified in return and restitution issues; or
- (c) a person designated by the Director General of UNESCO.

3. In a conciliation procedure the Parties submit their dispute to a constituted organ, which shall serve as conciliator and whose role is to clarify the dispute, investigate the relevant aspects and details of the case and submit to the Parties suitable terms of settlement.

4. The role of conciliator may be conferred on any of the following:

- (a) an outside person(s), or representative of an institution or other body pre-selected by the Committee, qualified in return and restitution issues;
- (b) a subcommittee of the Committee as described in Article 6 of the Statutes of the Committee. [composed of a set number of Member States, both members and non-members of the Committee];
- (c) a separately constituted group of 3 or 5 conciliators, each party to the dispute choosing one or two persons who are not of its nationality, the third or fifth person being chosen jointly by the two Parties. In cases where Parties cannot agree on a person chosen jointly, the process referred to in Article 7.2 will be followed.

**Canada:**

5. **Amendment: new paragraph 5**

A list of potential mediators and conciliators shall be drawn up and maintained by the Secretariat for the information of, and possible use by, Parties in selecting and appointing mediators or conciliators. To that end, each Member State of UNESCO shall be invited to nominate two individuals who could fulfil the role of mediator or conciliator in international cultural property disputes. The list shall be reviewed at five year intervals, when Member States may confirm existing nominations or submit new nominations. Parties to a mediation or conciliation procedure shall not be restricted to selecting and appointing mediators or conciliators only from among the individuals on the list.

## **Benin:**

- **Comment**

This article could become Article 4.

- **Amendment: paragraph 1**

*“[The process of mediation] is to bring the Parties of a dispute to a discussion and to assist them in reaching a solution a settlement”*

- **Amendment: paragraph 2**

*“(c) a person designated by the Director-General of UNESCO after consulting the parties concerned.”*

(There is some vagueness as to the number of people involved in the conciliation procedure. It is best to remove any ambiguity as these Rules of Procedure must form an unambiguous legal text).

## **Turkey**

- **Comment: paragraph 4 (c)**

We think that the qualifications required for the persons appointed to be part of the separate group of three or five conciliators should be stated (for example; a person qualified in return and restitution issues etc).

- **Amendment: paragraph 2: addition**

(d) “a specialist who has expertise on cultural properties subject to the dispute.”

## **Japan:**

- **Comment: paragraph 1**

In order to clarify the nature of Mediation, this Paragraph shall be changed so as to reflect the following meaning:

For the purpose of these rules, “ Mediation” means a process, whereby parties to a dispute request a third person, or under special circumstances three persons (“Mediators”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to return of cultural objects. The Mediator does not have the authority to impose upon the parties a solution to the dispute.

- **Comment: paragraph 2**

This paragraph shall be deleted (this matter is covered by the new Paragraph 5 proposed by Canada).

- **Comment: paragraph 3**

In order to clarify the nature of Conciliation, this Paragraph shall be changed so as to reflect the following meaning:

For the purposes of these rules, “Conciliation” means a process, whereby parties request a third-party organ, which consists of three or five persons (“the Conciliators”) to assist them in

their attempt to reach an amicable settlement of their dispute arising out of or relating to return of cultural objects. The Conciliator does not have the authority to impose upon the parties a solution to the dispute, but may, if necessary, investigate the relevant aspects of the case and submit to the parties suitable terms of settlement.

▪ **Comment and amendment: paragraph 4**

Item (a) and (b) shall be deleted (these matters are covered by the new Paragraph 5), and the first sentence of Article 2 Paragraph 4 shall be attached to Item (c) (however, the last sentence of Item (c), which is covered in Article 7 Paragraph 2, shall be deleted). Consequently, Article 2 Paragraph 4 shall be revised, as follows:

“Conciliators shall form a separately constituted group. Each Party to the dispute shall appoint one or two persons, who may not be of its own nationality. The third or fifth person shall be chosen jointly by the parties”



### **Article 3. Main Principles**

1. Mediation and conciliation procedures require the consent in writing of the Parties before that may be initiated.
2. Mediation and conciliation procedures shall be conducted in conditions of confidentiality, transparency and in accordance with the general principles of fairness, impartiality and good faith.
3. The Parties shall participate in a motivated and responsible manner and cooperate in order to proceed as expeditiously as possible.
4. The Parties, the Mediator or the Conciliator shall participate with a view to facilitating a settlement of the dispute in the spirit of the general principles of international law and of cultural heritage law.
5. The outcome of the procedure shall be binding on the Parties only when they reach an agreement that they deem binding.

### **Benin**

- **Comment**

Article 3 on the Main Principles and Article 5 on the common Rules could be merged to avoid duplication. The text would thus become Article 5 following some deletion and appropriate rewording.

- **Amendment: paragraph 2**

*“Mediation and conciliation procedures shall be conducted in conditions of confidentiality, transparency and in accordance with the general principles of fairness, impartiality and good faith.”*

(The phrase “cooperation in good faith”, which features in the French version only, is redundant as the very basis of cooperation is supposed to be good faith. The English expression “Thank you for your cooperation” indeed signifies honest cooperation. The word “cooperation” means to work with and not against).

- **Amendment: paragraph 3**

*“The Parties shall participate in a motivated and responsible manner and cooperate in order to proceed as expeditiously as possible.”*

(The phrase “in a motivated manner” has no particularly obvious or clear meaning. “In a responsible manner” means something, but “in a motivated manner” does not).

- **Amendment: paragraph 4**

*“The Parties, the mediator or the conciliator shall participate with a view to facilitating a the settlement of the dispute in the spirit of the general principles of international law and of cultural heritage law.”*

(Use the definite article “the” instead of the article “a” which is indefinite and refers here to something definite, i.e. the settlement of the dispute)

- **Amendment: paragraph 5**

“The outcome of the procedure shall be binding on the Parties only when they reach an agreement that they deem binding. The outcome (for want of a better term) of the procedure shall be binding on the Parties, who undertake to implement it subject to sanction.”

**Japan:**

- **Comment and amendment: paragraph 2**

A mediation or conciliation procedure shall be based on the principle of confidentiality, and transparency is not considered as necessary, therefore we agree to LA’s proposal concerning this Paragraph. Moreover, the following paragraph is to be added at the end of Paragraph 2:

“All parties concerned and the mediator(s) or the conciliator(s) shall not disclose any conducts or statements made in connection with, any writings relating to, and the conclusion of the mediation or conciliation to any other person or in the media without express prior authorization in writing of the all parties concerned”.

- **Comment and amendment: paragraph 4**

Since it is not clear what “cultural heritage law” means, one possibility is to delete this paragraph; or, if these words mean specific international agreements, these words shall be changed to “international law including relevant rules on cultural heritages” considering that international agreements are part of the international laws and their State Parties could not be uniformed.

**Italy:**

- **Amendment: paragraph 5**

«The outcome of the procedure is shall be binding on the Parties only when they reach an agreement that ~~they deem binding~~ a binding agreement on it”.

#### **Article 4. Parties**

1. Parties to conciliation or a mediation procedure may be Member States or Associate Members of UNESCO. Such States acting as Parties may, if they wish, represent the interests of State and private institutions located in their territory or the interests of their nationals.
2. A Party may withdraw at any time from the procedure.
3. A representative of each Party shall be present at all mediation or conciliation meetings. Each Party's representative shall have the requisite authority to agree to the settlement terms and conditions at which the Parties may arrive.
4. While complying fully with the principles of confidentiality, transparency, fairness, impartiality and good faith, the Mediator or the Conciliator may separately meet and communicate with each Party. The information given in this way shall not be disclosed without the express authorization of the Party providing the information.

#### **Benin:**

- **Comment**

Article 4 on the Parties and Article 8 on Consultations could be merged into a single Article 6.

- **Amendment: paragraph 1**

*"(...) the interests of State and or private institutions located (...) "*

- **Amendment: paragraph 2**

"A Party may withdraw at any time from the procedure. It must give the reason for its withdrawal. The mediator/conciliator shall report thereon to the Chairman of the Committee who shall then inform the Director-General of UNESCO".

- **Comment: paragraph 4**

Confidentiality and transparency are mutually exclusive.

#### **Turkey:**

- **Comment:**

Regarding the comments of the UNESCO Office of International Standards and Legal Affairs (LA) on the addition of a new paragraph 2 under Article 4, we think that the content of "Parties to a dispute that are not States or State-owned institutions" is very comprehensive. As it stands, this paragraph covers not only the museums and private galleries but all entities which are not States and consider themselves as Parties to the dispute.

However, the text in general is drafted for Member States or Associate Members of UNESCO. (For example Article 6 stipulates that: "Any Member State or Associate Member of UNESCO may submit a request to initiate a mediation or conciliation"). If the content of the text is to be enlarged so as to include all non-State actors, then the entire text has to be amended accordingly.

▪ **Amendment: paragraph 4:**

Regarding Article 4.4, we think that in accordance with the principle of transparency, each Party should have the right to know the information and documents conveyed by the other Party to the Mediator or Conciliator. The information given by one Party may require the submission of complementary information/documents by the other Party which may in return effect the direction of the ongoing negotiations. Therefore, all information and documents should be shared in good faith.

**United Kingdom:**

▪ **Comment:**

We share Canada's concerns and would ourselves propose that the following should be omitted:

*"Parties to a dispute that are not States or State-owned institutions may also have resort to these procedures with the agreement of the States concerned"*

This is on the basis that we would not wish to provide for individuals to invoke this procedure. We understand why it has been included but consider the drafting is too vague and open, because it could be attached to individual rather than to institutions and could involve member states in costs that they would not be prepared to underwrite.

**Japan:**

▪ **Comment: paragraph 1**

These rules on mediation and conciliation should envisage that only States can become parties and in order to make it explicit, the first sentence should be changed to "Parties to a mediation or conciliation procedure shall be limited to Member States and Associate Members of UNESCO". If we allow private persons or private institutions to become parties to a dispute relating to the restitution of cultural property, the eligibility criterion for becoming parties as well as its recognition will be complicated, and it may lead to a extremely confused situation (for instance, in case there would be a dispute based on a claim from a NGO of Country A to Country B, requesting that a cultural object be returned to Country C). From this point of view, Japan is opposed to LA's proposal of adding Paragraph 2.

▪ **Comment: paragraph 4**

It is not clear what this Paragraph is supposed to ensure, and the necessity to include this Paragraph is not clear either, therefore it should be deleted (should there be a specific goal to pursue, this Paragraph should be discussed for further clarification.)

**Italy:**

▪ **Amendment: paragraph 1**

*"Parties to a conciliation or a mediation Procedure may be ~~Member States~~ or public or private persons or institutions ~~Associate Members of UNESCO~~. ~~Such States acting as Parties may, if they wish, represent the interests of State and~~ public or private institutions located in their territory or the interests of their nationals".*

▪ **Amendment: paragraph 2**

*"A Party may ~~withdraw at anytime from the procedure~~".*

## **Article 5. Rules common to Mediators and Conciliators**

1. Mediators or Conciliators shall:
  - (a) act ensuring confidentiality and transparency;
  - (b) act according to the general principles of fairness, impartiality and good faith;
  - (c) not act as a representative or counsel of either Party in any subsequent proceedings concerning the dispute at issue.
2. Mediators or Conciliators shall be selected and appointed as individuals or entities qualified in restitution issues and knowledgeable with regard to the nature of the dispute and the specificity of the cultural property at stake.
3. The Parties may agree, at any stage of the procedure, to request the Chairman of the Committee to replace the Mediator or Conciliator.
4. Each Party may, at any stage of the procedure and in case of breach of any of the obligations set forth under Article 5 (1), request the Chairman of the Committee to replace the Mediator or Conciliator.

### **Benin**

- **Comment**

Article 3 on the Main Principles and Article 5 on the common Rules could be merged to avoid duplication. The text would thus become Article 5 following some deletion and appropriate rewording.

- **Comment: paragraph 1**

Subparagraphs (a) and (b) repeat each other unnecessarily.

- **Amendment: paragraph 2**

As “entities” is very vague it would be better to say “institutions”, which is the term already used in Article 2.

- **Amendment: paragraph 3**

“The Parties may agree, in any phase of the procedure at any stage of the procedure/at any time, to request the Chairman of the Committee to replace the mediator or conciliator. The grounds for the requested replacement must be set out clearly.”

### **Japan:**

- **Comment and amendment: paragraph 4**

It is said in the comment from LA that this Paragraph has been deleted because the same meaning is covered in Article 7, new Paragraph 4. However, the new Paragraph 4 of Article 7 states that it is possible to request the dismissal of the Mediator or Conciliator upon agreement of the Parties, and on the contrary, Article 5 Paragraph 4 stipulates that in case of a breach of

any of the obligation set forth under Paragraph 1, each party may separately request the dismissal of the Mediator or Conciliator (these two paragraphs have a different meaning). Consequently, Paragraph 4 shall not be deleted, and revised as follows, in harmony with the proposed contents for Article 7 Paragraph 4, as stated below in 13.

*“Each party may, at any stage of the procedure and in case of breach of any of the obligations set forth under Article 5 (1), ~~request the Chairman of the Committee to replace the Mediator or Conciliator~~ withdraw its consent to appoint the person as mediator or conciliator”.*

**Italy:**

▪ **Amendment: paragraph 4**

*“Each Party may, at any stage of the procedure and in case of breach of any of the obligations set forth under Article 5 (1), request the Chairman of the Committee to consider replacing the Mediator or Conciliator. The Chairman shall decide on the request”.*

## **Article 6. Initiating a Mediation or Conciliation Procedure**

1. Any Member States or Associate Members of UNESCO may submit in writing a request to initiate a mediation or conciliation procedure to the Director-General who shall acknowledge receipt, transmit it to the Chairman of the Committee and inform the Parties about the Statutes of the Committee and its Rules of Procedure.
2. The request shall contain the names and contact information of the representatives of the Parties, an indication of the nature of the dispute and the relevant supporting documents.
3. The Committee may recommend that any Member State or Associate Member of UNESCO, which has a case pending before it, submit a request for a mediation or a conciliation procedure.
4. The Chairman of the Committee shall examine the request and decide on its admissibility on the basis of the Statutes of the Committee. The Chairman shall do so, in cooperation with the UNESCO Secretariat, as soon as possible and also between sessions of the Committee, and promptly inform the Parties and the Members of the Committee about the admissibility of the request. If the request is not admissible, the Chairman of the Committee shall dismiss it, while the issue remains pending before the Committee.
5. A mediation or a conciliation procedure, in which a request has been declared admissible, shall not be deemed to have been initiated as long as it has not been accepted in writing by all of the Parties to the dispute. If a mediation or a conciliation procedure is initiated, it shall not prejudice the application and the effects of any other procedure or other means of dispute settlement that the Parties have undertaken or wish to undertake concurrently or at a later stage.

### **Benin:**

#### **▪ Comment**

It would be best to move the full text of Article 6 so that it becomes Article 1, since it deals with the problem of mediation and/or conciliation. Indeed, Article 6.3 states: “The Committee may recommend that any Member State submit a request for a mediation or a conciliation procedure.”

#### **▪ Amendment: paragraph 4**

“The Chairman of the Committee shall examine the request and decide on its admissibility on the basis of the Statutes of the Committee. The Chairman shall do so, in cooperation with the UNESCO Secretariat, as soon as possible, ~~and also~~ including between sessions of the Committee, ~~and promptly~~ He shall inform the Parties and the Members of the Committee about the admissibility or otherwise of the request. ~~If the request is not admissible~~ In case of non-admissibility, he ~~the Chairman of the Committee~~ shall dismiss it and set out the grounds for its dismissal. The issue remains, however, pending before the Committee.”

**Japan:**

▪ **Comment and amendment: paragraph 1**

Paragraph 1 shall be amended in order to clarify that prior consent of all parties concerned shall be the absolute prerequisite to initiate a mediation or conciliation procedure. From this point of view, the 1<sup>st</sup> sentence of this paragraph shall be amended as follows:

*“Any Member States or Associate members of UNESCO may submit in writing a request upon an agreement between the parties concerned to initiate a ~~mediation~~ or ~~conciliation~~ procedure to the Director General who shall acknowledge receipt, ~~transmit it to the Chairman of the Committee~~ and inform the ~~parties~~ about the Statutes of the Committee and its Rules of Procedure”.*

▪ **Comment and amendment: paragraphs 3-5**

(1) Paragraph 4 stipulates that the Chairman of the Committee shall decide on the admissibility of a request for a mediation or conciliation procedure and that the request which is not admissible shall remain pending before the Committee. On the other hand, Paragraph 3 stipulates that the Committee may recommend any Member States or Associate Member of UNESCO, which has a case pending before it, to submit a request for a mediation or conciliation procedure. Therefore, it may be unreasonable if the case, whose request is submitted based on the recommendation of the Committee in accordance with Paragraph 3, is not admitted after examination by the Chairman of the Committee as defined in Paragraph 4.

(2) It may be inappropriate and excessive that ICPRCP actively recommends the Member State or Associate Member of UNESCO to submit a request for a mediation or conciliation procedure on a certain pending case between States, since those States should know the mediation and conciliation procedures once these rules are adopted. Also, even though Paragraph 4 stipulates the admissibility of the request, it does not seem that there are any criteria to admit the case other than the agreement of the parties concerned, and it is questionable to provide with the Chairman of the ICPRCP Committee the authority to admit or dismiss the request.

(3) For these reasons, Paragraphs 3 and 4 should be deleted, and Paragraph 5 should be amended as follows:

*“A mediation or conciliation procedure, ~~in which a request has been declared admissible~~, shall not be deemed to have been initiated ~~as long as~~ unless it has ~~not~~ been accepted in writing by all of the parties to the dispute. If a mediation or conciliation procedure is initiated, it shall not prejudice the application and the effects of any other procedure or other means of dispute settlement that the parties have undertaken or wish to undertake concurrently or at a later state”.*



**Article 7. Appointment of the Mediator or Conciliator**

1. The Parties shall appoint a Mediator or Conciliator within 60 days of their written agreement to initiate a procedure and shall inform the Chairman of the Committee accordingly.
2. Failing such appointment, the Chairman of the Committee shall, after consultation of the Parties concerned, appoint a Mediator or Conciliator. Such an appointment shall be made as soon as possible, also between sessions of the Committee.

**Benin**

▪ **Comment**

As the problem of mediation/conciliation has been addressed in Article 6 (which would become Article 1), it would seem logical to mention the mediator/conciliator. Article 7 would thus become Article 2.

**Japan:**

▪ **Comment and amendment: paragraph 1**

A following new phrase ("upon the agreement of the parties concerned") should be added at the end of the 1<sup>st</sup> sentence in Article 7 Paragraph 2 in order to ensure that the appointment of a mediator or conciliator is based upon the agreement of all the parties concerned.

▪ **Comment and amendment: paragraph 2**

The phrase of "also between sessions of the Committee" is not necessary, or the formulation should be made better by replacing the original above-mentioned one by "whether or not the Committee is in session".

▪ **Comment and amendment: paragraph 4 (LA)**

The phrase "to request the Chairman of the Committee" should be deleted since the appointment of mediator(s) or conciliator(s) should be based on the agreement of the parties concerned.

## **Article 8. Consultations**

1. The Mediator or Conciliator may adopt his own rules of procedure.
2. The Parties shall submit to the Mediator or Conciliator the issues in question, their position thereon and all relevant documentation.
3. In consultation with the Parties, the Mediator or Conciliator shall then set the times, places and dates of their meetings and specify in which language(s) documentation and evidence shall be submitted.
4. The Mediator or Conciliator may conduct his own enquiries and research to determine the facts of a particular dispute.
5. Following the request of a Party, the Mediator or Conciliator may allow witnesses, experts or third parties to provide documentation or evidence.
6. Each Party shall have the right to submit new arguments and documents in writing before the procedure is concluded.
7. Consultations are confidential, no recording shall be made, and information or documents obtained during the procedure shall not be disclosed, unless the Parties agree otherwise.
8. The Mediator or Conciliator shall endeavour to bring the Parties to reach a settlement of the dispute within one year from the date of his/her appointment.
9. The Parties may set a time limit for the conclusion of the procedure, beyond which, if no settlement has been reached, the procedure shall be deemed to have been concluded.

### **Benin:**

#### ▪ **Comment**

Article 4 on the Parties and Article 8 on Consultations could be merged into a single Article 6.

#### ▪ **Amendment: paragraph 9**

*“The Parties may set a time limit for the conclusion of the procedure, beyond which, if no settlement has been reached, the procedure shall be deemed to have been concluded. The issue remains, however, pending before the Committee.”*

### **Czech Republic:**

#### ▪ **Comment and amendment**

The Czech Republic recommends that the proposed one-year time limit for settlement of the dispute be reconsidered: the objective time limits for settlement are much longer.

The Czech Republic bases its comment on the Directive 93/7/EEC setting the procedure for court claims of any cultural property illicitly removed from the territory of a Member State, and on Act no. 101/2001 Coll., on the Restitution of Illegally Exported Cultural Property, which implements this Directive the Czech Republic. Under this legal framework, the right to restitution of illegally exported cultural property is subject to prescription (i.e. becomes unenforceable, or, in some states, ceases to exist altogether), if the Requesting State fails to enforce it in court

within one year of the day when it learned about the location of the illegally exported property and the identity of its owner/possessor.

The one year available for resolution of the dispute by mediation or conciliation may prove to be too short also due the fact that the parties have 60 days from the day of their written agreement to initiate the procedure to appoint a mediator or conciliator.

**Turkey:**

▪ **Comment: paragraph 8**

We think that the Mediator or Conciliator, in order to make good use of the time in bringing the Parties to reach a settlement should hold several meetings during this one year period. Therefore, a minimum number of meetings could be added to this paragraph.

**Japan:**

▪ **Comment and amendment: paragraph 1**

“the issue is” may be a typo.

▪ **Comment and amendment: paragraph 7**

“*the express authorization*” in the second sentence should be amended as “*the express prior authorization in writing*”

▪ **Comment and amendment: paragraph 8 (LA)**

“in consultation with the parties” should be added in order to avoid giving the conciliator large authority, while the power of the conciliators to adopt the rules of procedure is common in other conciliation rules.

**Article 9. Reporting**

Parties shall report on the state of the procedure to the Committee at the following session

**Benin**

• **Comment**

Article 9 on Reporting is composed of a single sentence and could be merged with Article 10 on the “Conclusion of the Procedure”.

The two would thus become Article 7: Reporting and Conclusion of the Procedure.

• **Amendment:**

*“Parties shall report on the evolution/state of progress of the procedure to the Committee at the following session.”*

**Japan:**

▪ **Comment and amendment**

It does not seem necessary to report on the state of the procedure considering the characteristics of the mediation and conciliation, therefore, this article should be deleted or, at least, since the obligation of reporting should be based upon the consent of the parties concerned, “, provided that the parties to the dispute (or: parties concerned) so agreed” should be added at the end of this article.

## **Article 10. Conclusion of the Procedure**

1. A mediation or conciliation procedure shall be deemed to have been concluded in one of the following cases:

- (a) when a settlement that all Parties deem binding has been reached;
- (b) when all of the Parties concerned consent in writing to deem the procedure concluded;
- (c) when all Parties have set a time limit, within which no settlement has been reached.

2. The Parties shall promptly inform the Chairman of the Committee, who shall inform the Director-General of UNESCO and the Members of the Committee at the next session, of any settlement reached or procedure concluded without a settlement.

3. The Chairman of the Committee shall dismiss any procedure that has been concluded without a settlement, while the issue remains before the Committee.

### **Benin:**

- **Comment**

Article 9 on Reporting is composed of a single sentence and could be merged with Article 10 on the “Conclusion of the Procedure”.

The two would thus become Article 7: Reporting and Conclusion of the Procedure.

- **Amendment: paragraph 1(c)**

*“when all Parties have set a time limit, deadline by ~~within~~ which no settlement has been reached.”*

- **Amendment: paragraph 2**

*“The Parties shall promptly inform the Chairman of the Committee, who shall inform the Director-General of UNESCO and the Members of the Committee at the next session, of any settlement reached or procedure concluded without a settlement or of the failure of the procedure to reach a settlement) (or an agreement).”*

- **Amendment: paragraph 3**

*“~~The Chairman of the Committee shall dismiss any procedure that has been concluded without~~ not reached a settlement by the deadline. However, the issue remains before the Committee.”*

### **Turkey:**

- **Amendment: paragraph 1: addition (d)**

(d) when one of the Parties has withdrawn from the procedure.

- **Comment**

Accordingly, the procedure to be followed in the case of the “conclusion of the procedure by withdrawal of one of the Parties” should be clarified in a subsequent paragraph.

**United Kingdom:**

▪ **Amendment: paragraph 1**

(a) Be reworded when an amicable settlement has been reached

▪ **Amendment: paragraph 1**

(b) be reworded when all of the Parties concerned agree in writing that the procedure has been concluded.

**Japan:**

▪ **Amendment: paragraph 2**

For the same reason as in comment about article 9 above, "provided that the parties to the dispute (or: parties concerned) so agreed" should be added at the end of this paragraph.

**Italy:**

▪ **Amendment: paragraph 1**

« *A mediation or conciliation procedure shall be deemed to have been concluded in one of the following cases:*

(a) *when a settlement binding on ~~that~~ all Parties ~~deem binding~~ has been reached;*

(b) *when all Parties consent in writing to deem the procedure concluded;*

(c) *when all Parties have set a time limit, within which no settlement has been reached;*

(d) *when the mediator or conciliator has set a time limit, within which a settlement has not been reached*

**Article 11. Costs**

1. The Parties shall determine and pay compensation to the Mediator or Conciliator, unless the Mediator or Conciliator states in writing that his/her services are provided on a voluntary basis or another arrangement has been agreed.

2. The Parties shall bear equally all the costs of the mediation or conciliation procedure, with the exception of costs for witnesses, experts, third Parties or legal assistance when requested by only one Party, in which case the requesting Party shall cover the expenses incurred. Funding for a mediation or conciliation procedure shall not come from the budget of the institution or individual called upon to act as Mediator or Conciliator.

**Benin:**

▪ **Comment**

Article 11 on Costs is retained but becomes Article 8.

**Turkey:**

▪ **Comment**

A new paragraph could be added under this Article which clarifies the situations of the “withdrawal of one of the Parties from the procedure at any time” according to Article 4.2.

**SECOND PART**

**CONSOLIDATED VERSION PROPOSED BY THE SECRETARIAT**

This consolidated version includes amendments and comments made during the 14<sup>th</sup> session (June 2007) and those received from the UNESCO Office of International Standards and Legal Affairs as well as from some States.



### **General observation from the Secretariat**

The substantive modifications proposed below have been made with the purpose to simplify the mediation procedure and to rationalize the rules so as to give a more logical and coherent order to the existing provisions, some of which were misplaced in the text as originally drafted. The rest of the amendments made are purely stylistic and aimed at putting the text in line with the appropriate legal terminology.

#### **TITLE**

**DRAFT RULES OF PROCEDURES FOR MEDIATION AND CONCILIATION IN ACCORDANCE WITH ARTICLE 4, PARAGRAPH 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**

#### **Article 1. Scope and Nature of the Rules of Procedures for Mediation and Conciliation**

1. In accordance with 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 (hereinafter the “Statutes” and “the Committee”), any requests for the return or restitution of cultural property, as defined under Article 3 of the Statutes, which are submitted to the Committee, may also be dealt with under a mediation or a conciliation procedure if the parties to the dispute so agree. ~~to submit it through such a procedure.~~

2. The rules contained herein apply both to the mediation and to conciliation procedures before the Committee. ~~They apply to a procedure unless both~~ of the Parties agree to amend or exclude them before or during the procedure.

### **Comments from the Secretariat**

In the **title** of Article 1 the term “nature” was removed as it is more appropriately placed in the title of Article 2.

In **paragraph 1**, second sentence, a stylistic change is proposed to avoid the repetition of the term “procedure”. Since the term “parties” is mentioned here for the first time, a qualifier is added: “parties to the dispute”, an expression which is used also under Article 2.1.

In **paragraph 2**, the reference to “both of” the parties is deleted, as the parties to a dispute may be in some cases more than two. The formulation of this paragraph has been simplified to make it less redundant.

## Article 2. Nature of the Procedures and Roles of the Mediator and of the Conciliator

3. The process of mediation is to bring the Parties of a dispute together a discussion and to assist them in reaching a solution settlement<sup>2</sup>.

4. A mediation procedure shall require the involvement of one or more individuals who shall act as mediators, chosen by the Parties concerned and may include, but not be limited to, any of the following:

- (a) a representative of one or more UNESCO Member States~~of~~;
- (b) one or more independent person(s), or representative(s) of an institution or other body pre-selected by the Committee, qualified in return and restitution issues; or
- (c) a person designated by the Director General of UNESCO in consultation with the Parties.
- (d) a specialist who has expertise on dispute concerning cultural properties.<sup>3</sup>

3. In a conciliation procedure, the Parties submit their dispute to a constituted organ, which shall serve as conciliator and whose role is to clarify the dispute, investigate the relevant aspects and details of the case and submit to the Parties suitable terms of settlement.

4. The role of conciliator may be conferred on any of the following:

- (a) one or more independent person(s), or representative(s) of an institution or other body pre-selected by the Committee, qualified in return and restitution issues;
- (b) a subcommittee of the Committee ~~as described in Article 6 of the Statutes of the Committee~~, composed of a set number of Member States, both members and non-members of the Committee] in accordance with Article 6 of its Statutes;
- (c) a separately constituted group of 3 or 5 conciliators qualified in the issue of return and restitution of cultural objects<sup>4</sup>. Each party to the dispute ~~choosing~~ shall appoint one or two persons, who ~~are~~ may not be of its own nationality. The third or fifth person ~~being~~ shall be chosen jointly by the ~~two~~ Parties. ~~In cases where~~ If the Parties cannot agree on a person to be chosen jointly, within 60 days, the procedure provided under Article 7.2 below will be followed.

5. A list of potential mediators and conciliators shall be drawn up and maintained by the Secretariat for the information of, and possible use by, the Parties in selecting and appointing mediators or conciliators. To that end, each Member State of UNESCO shall be invited to nominate two individuals who could fulfill the role of mediator or conciliator in international cultural property disputes. The list shall be reviewed at five-year intervals, when Member States may confirm existing nominations or submit new nominations. The Parties to a mediation or conciliation procedure shall remain free to appoint mediators or conciliators not included in the aforesaid list.

<sup>2</sup> Amendment from Benin

<sup>3</sup> Amendment from Turkey

<sup>4</sup> Amendment from Turkey

### **Alternative proposals from Japan:**

- In order to clarify the nature of Mediation, **Article 2 paragraph 1** shall be changed so as to reflect the following meaning:

For the purpose of these rules, “Mediation” means a process, whereby parties to a dispute request a third person, or under special circumstances three persons (“Mediators”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to return of cultural objects. The Mediator does not have the authority to impose upon the parties a solution to the dispute.

- In order to clarify the nature of Conciliation, **Article 2 paragraph 3** shall be changed so as to reflect the following meaning:

For the purposes of these rules, “Conciliation” means a process, whereby parties request a third-party organ, which consists of three or five persons (“the Conciliators”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to return of cultural objects. The Conciliator does not have the authority to impose upon the parties a solution to the dispute, but may, if necessary, investigate the relevant aspects of the case and submit to the parties suitable terms of settlement.

- In **paragraph 4**, items (a) and (b) shall be deleted (these matters are covered by the new Paragraph 5), and the first sentence of Article 2 Paragraph 4 shall be attached to Item (c) (however, the last sentence of Item (c), which is covered in Article 7 Paragraph 2, shall be deleted). Consequently, Article 2 Paragraph 4 shall be revised, as follows:

Conciliators shall form a separately constituted group. Each Party to the dispute shall appoint one or two persons, who may not be of its own nationality. The third or fifth person shall be chosen jointly by the parties

### **Comments from the Secretariat**

**Paragraph 1** has been brought in line with the formulation of Article 4.1 of the Statutes.

In **paragraph 2**, in addition to few stylistic changes, sub-paragraph c) was modified to avoid a contradiction with the chapeau, which provides that mediators will be “chosen by the parties”. If this is the general rule, a person designated by the UNESCO Director-General has to be chosen “in consultation” with the parties concerned.

The text of **paragraph 3** has been made less redundant in accordance with the definition of conciliation under Article 4.1 of the Statutes.

In **paragraph 4**, minor stylistic changes have been made so as to render the text clearer and in line with legal terminology.

As concerns the nationality of the conciliators in sub-paragraph c), the Committee may consider whether also the third or fifth conciliator appointed jointly by the parties should be of a nationality other than the nationalities of the parties or of the other conciliators. A further alternative based on similar procedures existing within the UN system would be to have, as a rule, one conciliator being a national of each Party when the conciliation organ is composed of 5 members.

For the sake of clarity, a reference to the time-limit of 60 days for the joint appointment as provided under Article 7.1 is included.

In **paragraph 5**, the formulation of this provision was mainly proposed by Canada and has been improved from the stylistic point of view.

**Article 3. Main Basic Principles**

1. Mediation and conciliation procedures require the consent in writing of the Parties before ~~that~~ **they** may be initiated.
2. Mediation and conciliation procedures shall be conducted in conditions of confidentiality, transparency and in accordance with the general principles of fairness, impartiality, good faith **and confidentiality**.
3. The Parties shall participate in a ~~motivated and~~<sup>5</sup> responsible manner and cooperate in order to proceed as expeditiously as possible.
4. The Parties, the Mediator**(s)** or the Conciliator**(s)** shall participate with a view to facilitating **an amicable** settlement of the dispute in the spirit of the general principles of international law **including relevant rules on cultural heritage<sup>6</sup>** ~~and of cultural heritage law~~.
5. ~~The outcome of the procedure shall be binding on the Parties only when they reach an agreement that they deem binding.~~

**Comments from the Secretariat**

The amendments made to Article 3 are mainly stylistic. Confidentiality is referred to as a general principle to ensure consistency with Article 4.4 of the present text (now Article 8.7). The reference to transparency has been deleted, as it would be in contradiction with the principle of confidentiality.

**Paragraph 5** has been deleted since it refers to the conclusion of the procedures, an issue dealt with under Article 10, not to a general principle.

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<sup>5</sup> Amendment from Benin

<sup>6</sup> Amendment from Japan

**Article 4. Parties**

1. Parties to a mediation **or conciliation** procedure **may be shall be limited to**<sup>7</sup> Member States or Associate Members of UNESCO. Such States acting as Parties may, if they wish, represent the interests of State and private institutions located in their territory or the interests of their nationals.
2. **Parties to a dispute that are not States or State-owned institutions may also have resort to these procedures with the agreement of the States concerned.**
3. A Party may withdraw at any time from the procedure<sup>8</sup>.
4. A representative of each Party shall be present at all mediation or conciliation meetings. Each Party's representative shall have the requisite authority to agree to the settlement terms and conditions at which the Parties may arrive.

**Comments from the Secretariat**

A new **paragraph 2** has been added to allow the possibility for museums and private galleries, which hold the cultural objects being disputed, to have recourse to these procedures independently from an action taken by the Member State concerned. Such States may sometimes feel not to have a legal interest in the dispute because a private entity is the owner or the holder of the objects. The addition of a new paragraph 2 aims at addressing a recurring problem before the Committee.

**Paragraph 4** has been removed and more appropriately placed under Article 8 (paragraph 7), as it refers to the conduct of the procedures.

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<sup>7</sup> Amendment from Japan

<sup>8</sup> Italy suggests deleting this paragraph.

**Article 5. Rules common to of conduct for Mediator(s) and Conciliator(s)**

1. The Mediator(s) or and Conciliator(s) shall:

(a) ~~act ensuring and transparency;~~

(a) act according to the general principles of fairness, impartiality, good faith and confidentiality;

(b) not act as a representative or counsel of either Party in any subsequent proceedings concerning the dispute at issue.

2. Each party may, at any stage of the procedure and in case of breach of any of the obligations set forth under Article 5 (1), ~~request the Chairman of the Committee to replace the Mediator or Conciliator~~ withdraw its consent to appoint the person as mediator or conciliator<sup>9</sup>.

**Comments from the Secretariat**

This article has been shortened so as to include only rules of conduct for mediators/conciliators. **Paragraphs 2 and 3** have been placed more appropriately under **Article 7** concerning the modalities for the appointment of mediators/conciliators, whereas the original **paragraph 4** has been partly deleted because it refers to a situation already covered under paragraph 3. Nonetheless, the sentence “and in case of breach of any of the obligations set forth under Article 5 (1),” has been included in paragraph 3.

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<sup>9</sup> Amendment from Japan.

**Article 6. Initiating Commencement of a Mediation or Conciliation Procedure**

1. Any Member States or Associate Members of UNESCO may submit in writing a request to initiate a mediation or conciliation procedure to the Director-General who shall acknowledge receipt, transmit it to the Chairman of the Committee and inform the Parties about the Statutes of the Committee and its Rules of Procedure.
2. The request shall contain the names and contact information of the representatives of the Parties, an indication of the ~~nature~~ **subject** of the dispute and the relevant supporting documents.
3. The Committee may recommend that any Member State or Associate Member of UNESCO, which has a case pending before it, submit a request for a mediation or a conciliation procedure.
4. The Chairman of the Committee shall examine the request and decide on its admissibility on the basis of the Statutes of the Committee. The Chairman shall do so, in cooperation with the UNESCO Secretariat, as soon as possible ~~and also~~ **during or** between sessions of the Committee, and promptly inform the Parties and the Members of the Committee about the admissibility of the request. If the request is not admissible, the Chairman of the Committee shall dismiss it, **and set out the grounds for its dismissal**<sup>10</sup> while the issue remains pending before the Committee.
5. A mediation or a conciliation procedure, in which a request has been declared admissible, shall not be deemed to have been initiated as long as it has not been accepted in writing by all of the Parties to the dispute. If a mediation or a conciliation procedure is initiated, it shall not prejudice the application and the effects of any other procedure or other means of dispute settlement that the Parties have undertaken or wish to undertake concurrently or at a later stage.

**Comment from the Secretariat:**

Minor changes have been made to Article 6 to render the text more precise.

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<sup>10</sup> Amendment from Benin.

**Article 7. Appointment of the Mediator(s) or Conciliator(s)**

1. The Parties shall appoint a Mediator or Conciliator within 60 days of their written agreement to initiate a procedure and shall inform the Chairman of the Committee accordingly.
2. Failing such appointment, the Chairman of the Committee shall, after consultation of the Parties concerned, appoint a Mediator or Conciliator. Such an appointment shall be made as soon as possible, also between sessions of the Committee.
3. Mediators or Conciliators shall be selected and appointed as individuals or entities qualified in restitution issues and knowledgeable with regard to the nature of the dispute and the specificity of the cultural property at stake.
4. The Parties may agree, at any stage of the procedure and in case of breach of any of the obligations set forth under Article 5 (1), to request the Chairman of the Committee to replace the Mediator or Conciliator. The grounds for the requested replacement must be set out clearly.<sup>11</sup>
5. Subject to paragraph 4 above, vacancies which may occur in a procedure as a result of death, resignation or any other cause shall be filled as soon as possible by the procedure established for appointing the mediator/conciliator to be replaced.

**Comments from the Secretariat:**

Paragraphs 3 and 4 come originally from Article 5, paragraphs 2, 3 and partly 4.

A **new paragraph 5** has also been included to cover the situation in which a mediator/conciliator has to be replaced for objective reasons. As a result of these changes, the parties remain free to ask the Committee to replace a mediator/conciliator at any time during the procedure, including in case of a breach of the rules of conduct, whereas in case of a vacancy due to an objective reason the method used for appointing that mediator/conciliator could be followed (for example when the member concerned was jointly appointed by the parties).

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<sup>11</sup> Amendment from Benin



**Article 8. Consultations Conduct of the mediation or conciliation**

The Mediator or Conciliator may adopt his own rules of procedure.

1. The Parties shall submit to the Mediator(s) or Conciliator(s) the issues which is the subject of the dispute in question, their position thereon and all relevant documentation.
2. In consultation with the Parties, the Mediator(s) or Conciliator(s) shall then set the times, places and dates of their meetings and specify in which language(s) documentation and evidence shall be submitted.
3. The Mediator(s) or Conciliator(s) may conduct his own enquiries and research to determine the facts of a particular dispute.
4. Following the request of a Party, the Mediator(s) or Conciliator(s) may allow witnesses, experts or third parties to provide documentation or evidence.
5. Each Party shall have the right to submit new arguments and documents in writing before the procedure is concluded.
6. Consultations are confidential, no recording shall be made, and information or documents obtained during the procedure shall not be disclosed, unless the Parties agree otherwise.
7. While complying fully with the principles of fairness, impartiality, good faith and confidentiality, the Mediator(s) or the Conciliator(s) may meet and communicate separately with each Party. The information given in this way shall not be disclosed without the express authorization of the Party providing the information.
8. Within a conciliation procedure, the Conciliator(s) may decide whether to adopt detailed rules of procedure, including with respect to the submission of written pleadings by the Parties.
9. The Mediator(s) or Conciliator(s) shall endeavour to bring the Parties to reach an amicable settlement of the dispute within one year from the date of his/her appointment.
10. The Parties may set a time limit for the conclusion of the procedure, beyond which, if no settlement has been reached, the procedure shall be deemed to have been concluded. The issue remains, however, pending before the Committee.<sup>12</sup>

**Comments from the Secretariat**

**Paragraph 1** referring to the adoption of rules of procedure has been reformulated so as to refer only to the conciliation procedure, which is by definition more complex than the mediation procedure. The provision is now placed in **paragraph 8**.

A **new paragraph 7** concerning the conduct of the procedure has been added, which was originally placed under Article 4, paragraph 4.

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<sup>12</sup> Amendment from Benin.

**Article 9. Reporting**

Parties shall report on the state of progress of<sup>13</sup> the procedure to the Committee at the following session provided that the parties to the dispute so agreed.<sup>14</sup>

**Article 10. Conclusion of the Procedures**

1. A mediation or conciliation procedure shall be deemed to have been concluded in one of the following cases:

- (a) when an amicable settlement that all Parties deem binding acceptable has been reached;
- (b) when all of the Parties concerned consent in writing to deem the procedure concluded;
- (c) when all Parties have set a time limit, within which no settlement has been reached.

(d) When one of the Parties has withdrawn from the procedure.

2. The Parties shall promptly inform the Chairman of the Committee, who shall inform the Director-General of UNESCO and the Members of the Committee at the next session, of any settlement reached or procedure concluded without a settlement or of the failure of the procedure to reach an agreement<sup>15</sup>.

3. ~~The Chairman of the Committee shall dismiss any~~ When a procedure that has been concluded without a settlement, while the issue which is the subject of the dispute shall remain before the Committee as any other unsolved question which has been submitted to it.

4. The outcome of the procedure shall be binding on the Parties only when they reach a binding agreement on it.<sup>16</sup>

**Comments from the Secretariat:**

Under **paragraph 1**, a reference has been added in sub-paragraph (d) to the situation in which a Party decides to withdraw from a procedure.

**Paragraph 3** has been aligned to the wording of Article 4.1 of the Committee's Statutes, according to which "the outcome of the mediation and conciliation process is not binding on the Member States concerned, so that if it does not lead to the settlement of a problem, it shall remain before the Committee, like any other unresolved question which has been submitted to it".

<sup>13</sup> Amendment from Benin.

<sup>14</sup> Amendment from Japan

<sup>15</sup> Amendment from Benin

<sup>16</sup> Amendment from Italy presented originally on Article 3.

**Article 11. Costs**

1. The Parties shall **bear in equal share the costs of the mediation or conciliation procedure** ~~determine and pay compensation to the Mediator or Conciliator~~, unless the Mediator(s) or Conciliator(s) states in writing that his/her services are provided on a voluntary basis or another arrangement has been agreed.

2. Expenses incurred for witnesses, experts, ~~third Parties~~ or legal assistance when requested by only one Party, shall be borne by the latter, ~~in which case the requesting Party shall cover the expenses incurred~~. Funding for a mediation or conciliation procedure shall not come from the budget of the institution or individual called upon to act as Mediator or Conciliator.

**Comments from the Secretariat:**

The language of the provisions has been slightly simplified while keeping the substance unchanged.