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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

ORAL REPORT

Prepared by the Rapporteur: Mr. Carlos Ortega (Peru)
Paris, May 13, 2009

Mr. President
Representative of the Director General
Delegates
Ladies and Gentlemen

First I would like to thank all members of the Committee for the trust that they have shown in appointing me Rapporteur of this important session. I hope to have carried out this task faithfully and objectively and that this report reflects the essence of the debates and portrays their rich content.

I am confident that all of you will join me in congratulating our Chairperson, Mr. Mohammed Shabaan Sheya for his tireless and skillful direction of the debates that contributed highly to the success of this session. We also thank the Director-General for his continuous support for the activities of the Committee. We also express our gratitude to the Assistant Director-General for the Culture and the Secretariat for the quality of the documents prepared.

The fifteen 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 was held at UNESCO Headquarters in Paris from the 11th to the 13th of May 2009. The 22 members of the Committee were present. Forty States, not members of the Committee, were represented. Two States with a Permanent Observer Mission to UNESCO, five intergovernmental organizations and one non-governmental organization sent observers. 21 experts and five members from the Press were also present.

I. Opening of the session – election of the Bureau – adoption of the agenda

The representative of the Director-General delivered a message welcoming Members and Observers and presented the provisional agenda for the meeting. It was highlighted that even though the last ordinary meeting of the Committee was in May 2007, it had been an intense and prolific period as the Member States and experts have met twice since, in Athens, (17-18 March 2008) for the International Conference on the Return of Cultural Property and in Seoul, (25-28 November 2008) for the extraordinary session to celebrate the thirtieth anniversary of the creation of the Committee.

The fifteenth session was organized over three days in order to have a supplementary day to discuss all the pending issues including recommendations on future strategies for the Committee and the Draft Rules of Procedure on Mediation and Conciliation.

The committee then proceeded to the election of Mr. Mohammed Shabaan Sheya (Tanzania) as Chairperson of the Committee by acclamation. The meeting also elected as Vice-Chairpersons, representatives of Greece, Belarus, Mongolia and Libya and your humble servant, Carlos Ortega from Peru, as Rapporteur. The Chairperson opened the session, and the provisional agenda was adopted.

II. Report of the Secretariat

The Secretariat introduced its written report (CLT-2009/CONF.212/COM.15/2) on the implementation of the recommendations of the fourteenth session and on the developments since the previous session, in particular; the promotion of bilateral relations with the three current cases pending before the Committee; the UNESCO Cultural Heritage Laws database; the Athens International Conference (17-18 March, 2008); the report on the extraordinary session in Seoul, Republic of Korea (25-28 November 2008); the results of the meeting on the Declaration of Principles concerning cultural objects displaced in connection with the Second World War (17-18 March, 2009); the Fund of the Committee; the activities carried out by UNESCO in cooperation with its partners, INTERPOL, ICOM, UNIDROIT, the World Customs Organization (WCO), the Italian Carabinieri and the OCBC from France; on the agreements with ECOSOC's and the UN office on Drugs and Crime (UNDOC); on the UN resolution 1483 adopted by the Security Council on May 22, 2003 requesting States Members of the United Nations to "take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property", and finally on the state of ratifications of the UNESCO 1970 Convention and UNIDROIT of 1995.

The secretariat then reported on the awareness raising tools that have been or are being prepared, a Compendium: "Witnesses to History" on issues of return of cultural objects, and a promotional film and short clips on UNESCO's actions in the ongoing fight against illicit traffic of cultural property to be shown at airports and touristic places. This follows the example of the excellent awareness raising campaigns undertaken in Argentina and Colombia, initiatives that should be highlighted and congratulated, and finally the preparation of children's books in form of Comics intended to create and raise awareness in children in Iraq of the cultural heritage of their country.

III. The Debate

The Chairperson thanked the Secretariat for the complete report and opened the Debate. Several African States referred to the low rate of ratification in their Region of the two Conventions (1970 UNESCO and 1995 UNIDROIT) and appealed for a strategy to promote these legal instruments noting the increase in illicit traffic of cultural property during political and social unrest resulting from armed conflicts. They reiterated the need to promote awareness raising schemas not only for those responsible for the protection of cultural heritage but to the general population, often the first victims of this traffic. They suggested that the DG, through the ADG/Africa, could request that the African Union Heads of States and Ministers include in their agendas consideration of ratification of the Conventions.

The Secretariat responded by describing several activities undertaken in cooperation with ICOM and UNIDROIT for the African Region, citing the forthcoming training projects by the Carabinieri in Italy, with 20 African participants. Reference was also made to the close cooperation with the organizers of the African Union Congress that will take place in October 2009 and where it will be possible to make an appeal for further ratifications.

Several countries expressed their increasing support for the activities of the committee and supported the proposal of having the sessions of the committee once a year, in order to increase undertakings, activities and proper follow up of the discussions going on internationally concerning the question of return and restitution of cultural property.

The representative from the Republic of Korea expressed his country's sincere gratitude to all the participants of the extraordinary session in Seoul in November 2008, and congratulated the excellent collaboration with the Secretariat in the preparation of that meeting. He drew attention to the non-governmental experts meeting that was held in conjunction with this event and that allowed the study of issues regarding the problematic of return and restitution from an Asian perspective.

A number of countries welcomed the "moral and ethical dimension" present/considered in the resolution of conflicts and cited the possibility of reaching other types of cooperation agreements between States and foreign institutions such as museums, through joint excavation and restoration projects or loans of cultural objects. As expressed by one of the orators "Not all is legal, and Culture is too important to leave only in the hands of lawyers". Several participants presented examples of successful agreements regarding restitutions or loans of cultural property.

Professor O'Keefe was then given the floor to make a presentation on the legal obstacles that many countries encounter when starting restitution processes, particularly when dealing with archaeological material coming from sites for which there are no inventories or clear provenance documentation. He encouraged countries to affirm their property rights on Cultural Heritage as being inalienable and imprescriptible and to claim ownership by the State of all undiscovered archaeological remains and cultural property. He gave the example of Egypt as an example where, thanks to the encouragement of the Minister of Culture, all antiquities are now considered public property legally owned by the State and sanctions are reinforced in this domain.

Several countries from the Latin-American and Caribbean Region expressed the legal difficulties they continue to face when trying to obtain the restitution of cultural property, even in cases where legislations clearly define undiscovered archaeological heritage and the soil where they are found as the property of the State.

The expert Mr Sanchez-Cordero then presented a project to efficiently promote the ratification of the 1970 and UNIDROIT Conventions. He described both Conventions as being "two sides of the same coin", and assured the Committee that the UNIDROIT Convention is the natural consequence of the 1970 Convention. Following Professor O'Keefe's intervention, he defended the possibility of drafting a uniform law (*jus commune*) or Legislative Guide to fill the legal gaps at an international level. A kind of harmonization of national legislations on cultural property applicable in the framework of the two Conventions. He also suggested the creation of a working group that could explore possible uniform language and this idea was welcomed by several countries.

The representative of UNIDROIT highlighted the excellent collaboration with UNESCO and their availability to continue this cooperation in the setting up of a working group to study issues of state ownership and uniform law.

The representative of INTERPOL then took the floor to express their satisfaction with the actions carried out in cooperation with UNESCO, ICOM, and the police forces of many countries in the fight against illicit traffic. INTERPOL and Peru referred to the recent restitution of three cuneiform tablets from Iraq, seized by Peruvian Custom Official and successfully restituted to Iraq.

The afternoon session was opened by the Director General, Mr Matsuura, who thanked the participants for the national efforts being made against illicit traffic and congratulated the work of the Committee and of the State Parties in the field of restitution, citing as a major example the return of the Axoum Oblisque from Italy to Ethiopia and which is the subject of a current exhibition in the Ségur Hall of UNESCO HQ. He wished the committee well in its work in this session and expressed his desire for progress in the negotiations between Greece and the United Kingdom regarding the Parthenon Marbles. He then proceeded with the presentation of the publication "Witnesses to History", thanking the government of the Republic of Korea for its support.

Professor Lyndel V. Prott, Editor in chief of the publication, took the floor to explain that this book is an anthology of legal and philosophical reference texts on the subject of return of cultural objects, encompassing reflections and debates on the subject from as far back as the 18th Century and current perspectives and thinking on the subject. The publication will be translated into French and Korean due to contributions from the States. The Committee welcomed this Compendium and several participants suggested the translation into other languages such as Russian, Chinese, Arabic and Spanish. The Secretariat requested the help of the State Members for this undertaking.

The Committee then continued its work with the promotion of bilateral relations on the three cases currently pending before the Committee: The Parthenon Marbles (Greece, United Kingdom); The Boğazköy Sphinx (Turkey, Germany) and the Makonde Mask (United Republic of Tanzania, Switzerland). Ms. Al-Dabbagh, from the UNESCO office for Iraq in Amman, Jordan made a presentation on UNESCO's activities in Iraq in the fight against illicit traffic of cultural property and restitution. Ms Elena Korka, Director of the Prehistoric and Classical Antiquities from the Hellenic Ministry of Culture, then took the floor to present the Proceedings of the Athens International Conference published in Museum International Magazine and gave a short report on the background, participants and results of the Conference.

On the meeting of the third day, Professor Scovazzi, from the University of Milan, addressed the Committee on the development of Ethical Principles and Legal Rules in the field of Return of Cultural Properties. The session continued with the joint presentation of Professor Renold from the University of Geneva, Coordinator of the Art Law Centre and Ms. Cornu, Director of research at the French National Centre for Scientific Research (CNRS) on New Developments in the Restitution of Cultural Property: Alternatives Means of Dispute Resolution. Brigadier General Giovanni Nistri, Commander of the Carabinieri Headquarters for the Protection of

Cultural Heritage and the fight against illicit traffic then made a short presentation on activities and collaboration projects currently being undertaken with UNESCO. A representative of the English auction house Christie's was then offered the opportunity to briefly take the floor to describe the working method of his institution and ethical rules governing the auctions of works of art.

The Draft Rules of Procedure on Mediation and Conciliation were presented by the Secretariat in the working document (CLT-2009/CONF.212/COM.15/1 Rev.) which included amendments from several Member States and one IGO committee.. A representative from the World Intellectual Property Organization (WIPO) presented the activities of that organ in the field of arbitration and mediation. Several participants expressed their desire to have a permanent advisor from WIPO during the discussions of the Committee on the subject of mediation.

The first four articles of the Draft Rules of Procedure were discussed at length. Despite the spirit of co-operation and flexibility demonstrated by the participants, they were unable to reach consensus on several key issues and the debate continued with no significant progress. It was therefore decided to create a working group to draft a proposal that could reflect the different positions. The working group presented its results and proposed amendments to the plenary and the three first articles were approved. However, regarding Article 4 on the constitution of the Parties, the Committee was unable to reach consensus. For this reason it was decided to create a sub-committee to study the Draft Rules and report back to the Committee at a future date. The Secretariat was charged with proposing its composition and dates in due course.

The Committee concluded its work with the analysis and approval of the Recommendations and decided to organize the next meeting to take place in 2010.