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Organización
de las Naciones Unidas
para la Educación,
la Ciencia y la Cultura

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منظمة الأمم المتحدة
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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**

**FINAL REPORT OF THE SIXTEENTH SESSION
(21-23 September 2010)**

I. Introduction

1. The sixteenth 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 (hereinafter called "the Committee") was held at UNESCO Headquarters in Paris from 21 to 23 September 2010. Twenty-one of the 22 States Members of the Committee were represented. Fifty-seven UNESCO Member States not members of the Committee were also registered as observers, as were two permanent observer missions, five intergovernmental organizations, four non-governmental organizations, 25 experts, 16 individual observers and two representatives from the press.

II. Opening of the Session – Election of the Bureau – Adoption of the agenda

2. Mr Alain Godonou, Director, Division of Cultural Objects and Intangible Heritage, opened the meeting on behalf of the Director-General, Ms Irina Bokova. Mr Constantin Economidès (Greece) was elected Chairperson. The Libyan Arab Jamahiriya, Mexico, Republic of Korea and Romania were elected Vice-Chairpersons and Mr Folarin Shyllon (Nigeria) was elected Rapporteur. The provisional agenda proposed by the Secretariat was adopted.

III. Secretariat Report¹

3. In accordance with agenda item 3, the Secretariat's report on developments since the Committee's previous session was presented to the Committee. The report provided an update on the progress made in the implementation of the recommendations of the fifteenth session (2009) and on the activities carried out by the Organization with its partners: UNIDROIT, INTERPOL, ICOM, WCO, the Italian Carabinieri and the French Office Central de lutte contre le trafic des biens culturels (OCBC) in the fight against trafficking in cultural property.

4. More specifically, the report gave an account of the promotion of bilateral relations between countries concerned by pending requests for restitution of cultural property brought before the Committee; the progress of the draft rules of procedure on mediation and conciliation; the preparation of model rules defining State ownership of cultural property; the UNESCO Database of

¹ Document reference: CLT-2010/CONF.203/COM.16/2 Rev.

National Cultural Heritage Laws; the draft declaration of principles relating to cultural objects displaced in connection with the Second World War; the status of the Fund of the Committee; international cooperation (focusing on Haiti and the organization of training workshops on every continent), and awareness-raising initiatives using publications, audio-visual materials and links with the art market.

5. The Chairperson then opened the discussion to Member States and observers. The representative of the Iraqi delegation wished to inform the Committee of Iraq's policy on the protection of cultural property. After recalling the chaos that had followed the invasion of Iraq, the Iraqi representative said that, despite some positive signs (about 5,000 of the 15,000 missing objects having been found), it was still difficult to recover objects that had been stolen and looted. The Iraqi authorities had also set up a committee to monitor applications for collecting such objects. Important regulations had also been adopted in that area and talks had been held with the United States of America, among others.

6. The representative of Italy highlighted the need to implement existing international instruments and to strengthen cooperation. In that context, during its presidency of the G8, Italy had organized a workshop on the trafficking of cultural property with the aim of consolidating cooperation and, in particular, exchanging points of view in order to combat that scourge. Two exhibitions had also been arranged to show objects that had been returned either by other States or thanks to the work of the Carabinieri.

IV. Report of partner institutions

7. UNESCO continued to maintain fruitful cooperative relations with INTERPOL, UNIDROIT, the United Nations Office on Drugs and Crime (UNODC), ICOM, the Italian Carabinieri and the French Office Central de lutte contre le trafic des biens culturels (OCBC) in the area of combating trafficking and developing tools to promote the return and restitution of cultural objects. These organizations communicated on an almost daily basis, particularly regarding cases of theft and illicit export of cultural property in the world and the arrangements for their return. That was why the Secretariat had felt the need for representatives of those institutions to take the floor during the Committee session, to enable them to present some of their activities.

(a) INTERPOL

8. After reminding members that INTERPOL was not directly involved in the restitution of cultural property to its countries of origin but that it did provide the international community with a number of tools to deal with the traffic and theft of cultural property, the INTERPOL representative wished to highlight two specific points. Firstly, he reported on the progress of the INTERPOL database of stolen objects – a catalogue of photographs and descriptions of more than 35,000 cultural items stolen worldwide. While the tool was already a success, having been available to the public since August 2009 (1,800 applications for access had been approved since it opened), considerable effort was still needed because it had become apparent that Europe supplied three-quarters of the material for the database. INTERPOL was also providing resources and tools to encourage countries to adopt the measures needed to protect their heritage against theft and trafficking. One of INTERPOL's priorities was to develop skills through conferences, working groups or training seminars *in situ*, within the member countries.

(b) UNIDROIT

9. The representative of this historic organization, which maintained close ties with UNESCO, stressed the importance of partnerships and international cooperation in effectively combating trafficking in cultural property. She explicitly highlighted the training workshops organized by UNESCO in cooperation with INTERPOL and ICOM in Latin America and the Caribbean, the Gulf States and Lebanon, to the benefit of Iraq in particular. With regard to the effort required to encourage dialogue with representatives of the art market, UNIDROIT emphasized the steps taken

by two important States in that area, Switzerland and Belgium, while regretting the fact that of the 31 States Parties to the 1995 Convention, those that hosted the main marketplaces – both in Europe and in the Asia and the Pacific region – were absent. On the question of ratifications, Colombia and Algeria would be depositing their instruments in the near future, Ireland and Sweden had announced their intention to ratify and Denmark had recently become a State Party. Finally, referring to the fact that some UNODC States were planning to add a protocol on cultural property to the 2000 Palermo Convention, the UNIDROIT representative stressed the need to concentrate on a limited mandate, which should be implemented effectively and underpinned by existing instruments, the full implementation of which must be the priority. That had been the focus of the work, led jointly by the Secretariats of UNESCO and UNIDROIT, of the group of experts on the preparation of model provisions to help States to define in their legislation the ownership of the State or cultural properties, including archaeological heritage.

(c) UNODC

10. Within the framework of the cooperation that UNESCO and the United Nations Office on Drugs and Crime had been building since 2009, a UNODC representative was invited to speak at the podium. She stressed the recent transnational nature of trafficking in cultural property, the involvement of organized crime and the problematic use of the Internet in that activity. The 2000 Palermo Convention against Transnational Organized Crime was an effective weapon in the fight to curb that phenomenon.

(d) ICOM

11. Turning to the issue of alternative means for resolving disputes regarding cultural property through mediation and conciliation, and referring to the UNESCO rules that were being prepared in that area, the NGO representative stressed the need to appoint an impartial facilitator and announced the launch of a similar project in 2010-2011. The representative of Greece called for the ICOM Code of Ethics for Museums to be updated and for an inventory campaign, covering digitization of photographs, to be launched.

(e) Specialized Police Corps

12. The Italian Carabinieri and the French Office Central de lutte contre le trafic des biens culturels (OCBC) each spoke in turn. The Carabinieri Colonel presented the recent restitutions of many works of art and archaeological objects to Albania, Austria, Bulgaria, Lebanon, Peru, Portugal and Serbia. Besides, he reported on the Department activities to increase public awareness and on the new and successful Italian approach undertaken to recover important archaeological objects displayed in foreign museums.

13. The presentations were followed by a discussion between Committee members during which the representatives of Peru and Mexico regretted the systematic plunder to which their own countries and others in the region were subjected² and called for an in-depth international discussion of the reasons for that phenomenon and of the ways in which the problem might be more effectively addressed. The Committee had a specific role to play in that regard, being a permanent space for the exchange of experience, good practice and advocacy. The Egyptian delegation stressed the importance of cultural heritage for the development of a country and the need to preserve the context of the cultural object, which gave it its authenticity and relevance. To that end, several delegations called for greater efforts to secure sites and train heritage personnel and for public opinion campaigns and databases of stolen objects to be launched.

² Peru had nevertheless been able to recover more than 5,000 objects over the years.

V. Consideration of cases pending before the Committee and promotion of bilateral negotiations

14. The parties involved in the two cases pending before the Committee, Greece and the United Kingdom of Great Britain and Northern Ireland for the Parthenon Marbles and Turkey and Germany for the Boğazköy Sphinx, gave an update on the ongoing bilateral negotiations. A recommendation had been drawn up for each case, prepared under the auspices of the Committee with the assistance of the Secretariat, and was presented jointly by the parties concerned.

15. Regarding the issue of the Parthenon Marbles (Recommendation No. 1 adopted at the fifteenth session of the Committee), the representative of Greece stressed the importance of the aesthetic value of the work, its unity and its original context over the question of ownership. She referred to the opening of the Acropolis Museum, which had been attended by the Director-General of UNESCO and a representative of the United Kingdom. The Museum was in direct visual contact with the Parthenon and thus offered an aesthetically perfect repository for the sculptures currently displayed at the British Museum. The representative of the United Kingdom congratulated Greece on the opening of the Acropolis Museum, stating that the Marbles belonged to the British Museum which was governed by an independent Board of Trustees and called for dialogue to continue until an agreement could be reached.

16. Regarding the case of the Boğazköy Sphinx (Recommendation No. 2 adopted at the fifteenth session of the Committee), the representative of Turkey, after outlining the background of the case, announced that a meeting of experts would discuss the issue in December 2010. The representative of Germany said that the matter had been discussed at a high level in March 2010. The return of some cultural objects was also mentioned, which was evidence of Germany's willingness to cooperate with international organizations in that area. The representative of Germany also recalled that his country had ratified the 1970 UNESCO Convention in 2007 and that the national legislation implementing the Convention had been forwarded to UNESCO for inclusion in the Database of National Cultural Heritage Laws. Furthermore, he encouraged all the States in attendance to do the same. Turkey and Germany jointly submitted a draft recommendation to the Committee, which it then adopted (Recommendation No. 2).

17. Pursuant to Recommendation No. 3, adopted at the fifteenth session of the Committee, a solution had been found to the case of the Makonde Mask through the good offices of Switzerland in Bern and in Paris and to the fact that the discussions had been facilitated by the UNESCO Secretariat. After 20 years of negotiations between the parties, the mask had been presented to the government delegation of the United Republic of Tanzania by representatives of the Barbier-Mueller Museum³ under the auspices of ICOM, which stressed the importance of its Code of Ethics. Several African countries and the Committee Chairperson welcomed this successful restitution and expressed the hope that the example would be an inspiration for the Committee's future work.

VI. UNESCO Database of National Cultural Heritage Laws

18. The database was one of the practical tools developed by the UNESCO Secretariat to help combat trafficking in cultural property. During the presentation, it was mentioned that the tool had been launched in 2005 using American Funds-in-Trust.

19. States were encouraged to continue to forward their new legislative texts and any cultural property certificates to the Secretariat for inclusion in the database, which currently contained 2,310 texts from 180 States. An update on the database, for which a glossary was being drafted, was also presented. The work was applauded by a number of Committee members and observers. Several participants expressed the hope that the database would continue to grow.

³ The ceremony was held in Paris on 10 May 2010. For further details, see the Addendum to the Secretariat Report (ref. CLT-2010/CONF.203/COM.16/2 Rev. Add.).

VII. Statements by legal experts

20. In continuation of the presentations and discussions held at the fifteenth session of the Committee, at the request of Committee members and in order to continue to develop the discussions launched on that occasion, the Secretariat had invited various experts to attend the sixteenth session to deliver a paper on the progress in their area of expertise.

- (a) Work of the committee of experts on the preparation of model rules defining State ownership of cultural property

21. Following on from the discussion on model rules defining the State ownership of cultural property at the fifteenth session of the Committee, it had been recommended that the topic should continue to be discussed by a committee of independent experts appointed in their personal capacity. The Secretariats of UNESCO and UNIDROIT set up the committee with the following membership: Jorge Sanchez-Cordero and Marc-André Renold (Co-Chairpersons), Folarin Shyllon, James Ding, Manlio Frigo, Norman Palmer, Patrick O'Keefe, Thomas Adlerkreutz and Vincent Negri.

22. Professor M.-A. Renold (University of Geneva, Switzerland) recalled the context in which the expert committee had been created (the Committee's thirtieth anniversary, celebrated in Seoul in November 2008) and its membership (see above). The committee had discussed the scope of its terms of reference and the definition of its mission. The main objective was to secure model provisions (rather than detailed legislation) with explanatory guidelines on State ownership of undiscovered cultural property in order to facilitate its restitution and avoid the difficulties associated with the disparate definitions present in national legislation. Regarding the terms of reference, a compromise solution had been chosen, involving a series of model rules to facilitate ratification and implementation of the UNESCO and UNIDROIT Conventions. Mr Renold then presented a number of proposals that had previously been discussed by the committee of experts and which could provide the bulk of the model rules: a general duty of States to protect undiscovered heritage and preserve it for future generations; definition of undiscovered cultural property (including archaeological materials); preservation of existing property rights; possibility of sanctions; definition of State ownership of undiscovered cultural property; proposal for a good faith and payment of compensation clause, and, finally, treatment of any unlawfully uncovered and unlisted cultural property as stolen.

23. Committee members were generally supportive of the initiative and called for it to be formalized in a recommendation (see in annex Recommendation No. 3), specifying that it should not constitute a normative instrument designed to amend the Conventions, but rather help to implement them better, in particular by facilitating recognition of property rights in foreign courts.

- (b) Alternative means for resolving conflicts regarding cultural property

24. Professor M. Cornu (CNRS, France) recalled the context of these studies, the first draft of which had been presented at the fifteenth session of the Committee. While international conventions and codes had a certain influence, they could not always govern over restitution claims. Hence the increasing interest in exploring new tools, gathering various restitution examples and making them available to countries that might wish to emulate them.

25. Fresh impetus had been observed on three levels. Firstly, new players (regional institutions or indigenous communities) were beginning to make regular restitution claims. Secondly, the negotiation process itself offered an increasingly wide range of alternatives (reciprocal obligations, deposits, exchanges, perpetual loans, etc.) to simple restitution. Since compromise was increasingly preferred, an ownership dispute could be resolved without necessarily being settled definitively. Finally, a moral duty of restitution and increased vigilance with regard to the origins of works had been emerging. The argument in favour of respecting fundamental rights offered a new perspective in applications for restitution of certain cultural objects, particularly when dealing with human remains.

(c) Ethical principles and legal rules relating to cultural property

26. Professor T. Scovazzi (University of Milan, Italy) briefed Committee members and other States and observers in attendance on the discussions conducted on behalf of UNESCO concerning the development of ethical and legal principles and the consequences for the protection of cultural property. It had followed on from a previous presentation of the subject at the fifteenth session, which had been welcomed by participants. According to Professor Scovazzi, the ethical component could have an impact on the development of international law and the establishment of new rules in both treaty law and international case law. The principles (such as the principle of non-equity or the integrity of the cultural context), which applied to heritage protection and to the return and restitution of cultural property, had been analysed and assessed to identify the extent to which they might help facilitate the work of the Committee in promoting the return of cultural property to its countries of origin or its restitution in case of illicit appropriation.

27. In the ensuing discussion, some States raised the issue of the non-retroactivity of international conventions and the need to provide specific solutions to strengthen bilateral cooperation and ensure the restitution of stolen or illegally exported objects. Mexico thanked the work accomplished on the development of new principles on restitution of cultural objects as a way to complement the current normative instruments. Mexico also reiterated the relevance of opening a forum for reflection in view of the limitations of the current legal framework, especially for the fight against illegal excavations of archaeological objects. Mexico expressed its desire to keep on record a legitimate concern, bearing in mind the problems associated with the registration of archaeological objects coming from illegal excavations, the increasing sale of those objects in auctions and the difficulties thereon from its country to recover them abroad. Mexico emphasized that even if it is conceivable to adopt a series of principles, as those presented by Prof. Scovazzi, it does not exclude the possibility of reflecting on ways and means to strengthen the mechanisms of bilateral cooperation or even explore alternative solutions. Within this framework, Mexico announced that it is carrying out a deep reflection exercise on this issue across all the International Organizations in which the country is member. The United States of America stressed that the problem did not lie in the lack of legal instruments to facilitate return and restitution, but rather in the inadequate implementation of those instruments, whose legal and operational potential (particularly in the case of databases and bilateral agreements) were not exploited to the full. Concluding the debate, the Chairperson asked the Secretariat to organize a substantive discussion on the issues and a thorough review of the 1970 Convention.

VIII. Codes of ethics and conduct of the art market

(a) Sotheby's Ethics and Compliance Department

28. The Director of the Department, Jane Levine, outlined Sotheby's policy towards the fight against corruption, money laundering, data protection and scrutiny of the provenance of art objects (including archaeological materials), etc. This was done by various means such as the consultation of records, databases, verification of export certificates and sellers' identities. She said that, given the symbolic and cultural importance of the object for some communities, some dubious pieces were rejected and that the auction house still had a responsibility after the auction was over.

(b) The rules of conduct of the Syndicat national des antiquaires (SNA)

29. The Secretary-General of SNA, Dominique Chevalier, gave a brief introduction to the institution, which had been founded in 1901. He described SNA's strict membership rules and the principles advocated in the sale and purchase of art (verifying the identity of the seller, the origin of the object, maintenance of a police register, special attention to non-residents, etc.). The SNA was not in favour of the 1995 UNIDROIT Convention because it created legal uncertainty for the owner of the object, did not impose any import controls and provided for conditional compensation. He also emphasized the problem of disparate legislation and the difficulty in securing any harmonization, especially in Europe where application of the 1993 Directive was poor. Finally, he said that art market players were sensitive to the problem of trafficking and willing to cooperate but

that source countries also had a responsibility for monitoring the market; that over-regulation encouraged the black market and that it was unrealistic to try to protect all the art or handicraft of a country. SNA was more in favour of drawing up lists to preserve national treasures.

- (c) The role of the auction house in the fight against trafficking in cultural property – Christie's

30. Presenting himself as a partner in the fight against trafficking in cultural property, the representative from Christie's, Martin Wilson, described the ethics and moral obligations that were enforceable against traffickers. Auction houses played a role in the dissemination of knowledge, conservation, education and in the return of cultural property when, following a wide distribution of catalogues and careful research, it turned out that they were the fruit of an illegal act, especially where archaeological materials were concerned, as they often came from illicit excavations. There were several different challenges: the need to set up specific communication networks and secure agreements to enable rapid notification of vulnerable items, theft and market presence, accessing and sharing information and early communication of restitution claims.

- (d) The role of the Syndicat national des maisons de ventes volontaires (SYMEV) and CINOA's Code of Ethics

31. Heir to a 550-year tradition of auctions, SYMEV implemented binding European regulations designed to combat money laundering, with the assistance of databases of stolen objects. The SYMEV representative, Henry de Dannes, had little enthusiasm for the 1995 Convention, which he considered created an unfavourable legal situation in the market and that seizures of objects undermined the art market and the image of the country that harboured them. As to the International Federation of Dealer Associations (CINOA), represented by Lise Cormery, it had been established 75 years previously and applied a code of ethics while seeking to address the issue of reversing the burden of proof in the possession of cultural property.

32. During the ensuing discussion, Switzerland presented the legislation it had adopted in 2005 following ratification of the 1970 Convention in 2003 and supported a recommendation to encourage States to provide information regarding the stolen objects database. Romania called for greater international cooperation between IGOs and representatives of the art market to bolster the fight against trafficking.

IX. Consideration and adoption of the draft rules of procedure on mediation and conciliation

33. At its 33rd session, the General Conference adopted 33 C/Resolution 44, which added mediation and conciliation to the Committee's mandate. Draft rules of procedure, drawn up by the Secretariat on the basis of Recommendation No. 3, which the Committee had adopted at its thirteenth session, were submitted to it at its fourteenth session. On that occasion, two rules out of 11 had been considered and amended. At the fifteenth session, the Committee opted for a rule-by-rule review, in order to facilitate its work. The Committee had examined the first four draft rules but had been unable to reach an agreement on certain key issues. It had therefore decided to set up a subcommittee, tasked with developing proposals and presenting its findings at the sixteenth session of the Committee. The resulting draft⁴ was presented to all participants and adopted after discussion.

34. Under the new Rule 2(6) of the Rules of Procedure, the Secretariat must draw up and maintain a list of mediators and conciliators and, to that end, invite UNESCO Member States to nominate two individuals who could fulfil the role of mediator or conciliator in international cultural property disputes.

⁴ CLT-2010/CONF.203/COM.16/1 Rev.

X. Exchange of information and awareness in the fight against trafficking in cultural property – UNESCO

35. Since 2009, UNESCO had been using extrabudgetary funds to develop several projects to promote its activities and raise the awareness of both States and the public about the importance of protecting the heritage and engaging in the fight against trafficking in cultural property. The Compendium “Witnesses to History – Documents and Writings on the Return of Cultural Objects”, published by UNESCO Publishing and presented at the fifteenth session, would soon be available in French. A Chinese translation was in progress and the Korean, Spanish and Portuguese versions were being negotiated. The Secretariat had renewed its appeal to the States concerned by the Arabic and Russian versions in order to secure their support.

36. Another major project designed to improve the explanation and progress of the work carried out by UNESCO, its partners and stakeholders in the art market was a short, 17-minute film, translated into the Organization’s six languages. Meanwhile, the Secretariat was preparing a series of video clips tailored to each continent. The aim was to educate tourists and the local community in the protection of cultural heritage, which represented the identity of a country or region.

37. The film and the video clip for Latin America were shown at the Committee meeting. They were both given a highly favourable reception by the Member States and observers in attendance.

XI. UNESCO’s draft database on return and restitution

38. Within the framework of the Committee’s activities to facilitate the settlement of disputes relating to the return and restitution of cultural property and with regard to its role as a forum for discussion for States in that area, a new database of successful practice in the field of return and restitution had been requested at the fifteenth session. The practical new tool would aim to highlight the efforts, creative solutions and alternative methods used to resolve restitution claims so that they could serve as examples for parties in cases where negotiations had failed or stalled.

39. The project was presented, in substance and in its provisional form, at the sixteenth session and received the support of Committee members and of other States which had called for the adoption of Recommendation No. 6 to reflect such an approach (see Annex).

XII. Adoption of Recommendations

40. Eight draft recommendations had been prepared and examined by the Committee to ensure that they best reflected the outcome of the discussions. All of the recommendations were adopted and are contained in annex to this Report.

ANNEX I

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

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

Sixteenth session
Paris, 21-23 September 2010

Recommendation No. 1

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Acknowledging the relevant UNESCO recommendations expressing its continuing concern for a solution to the issue of the Parthenon Sculptures,

1. *Acknowledges* with great satisfaction the opening and inauguration on 20 June 2009 of the New Acropolis Museum with its special Hall for the Parthenon Sculptures in direct visual contact with the monument,
2. *Thanks* Greece for inviting the Director General of UNESCO and representatives from the UK to the inauguration ceremony of the Museum,
3. *Takes note* that, on the opening of the Museum, three sculptural fragments were exhibited which have respectively been returned from the University of Heidelberg and loaned from Italy and the Vatican to Greece to be co-exhibited in the Parthenon Hall with the original sculptures from which they were detached,
4. *Acknowledges* the fruitful cooperation between Greece and the UK on cultural matters and expresses the wish that this should continue with a view to concluding the ongoing discussions in respect of the Parthenon Sculptures,
5. *Takes note* that Greece invites the UK to collaborate with Greece in exhibiting all the Parthenon Sculptures in their respective collections in the New Acropolis Museum and,
6. *Invites* the Director General to assist in convening the necessary meetings between Greece and the United Kingdom, with the aim of reaching a mutually acceptable solution to the issue of the Parthenon Sculptures.

Recommendation No. 2

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Recalling the request of Turkey for the Sphinx of Boğazköy, which is currently on display in the Berlin Museum,

Noting the legal and cultural arguments, that have been made by both States concerned over a number of years,

Recalling the previous Recommendations (No. 2) adopted by the Committee on this question at its sixth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth sessions,

Acknowledging the continuing concern of Turkey for the long-awaited resolution of the issue of the Sphinx,

Noting that Turkey has transmitted a new dossier to the German side regarding the Sphinx during the 17th Session of the Turkish-German Joint Cultural Commission Meeting which took place in Ankara on 16-17 October 2006,

Recalling that the issue of the return of the Sphinx is a pending agenda item of the Committee since 1987,

Noting with satisfaction that the 7,400 cuneiform tablets which were part of the original request of Turkey from the German Democratic Republic were returned in November 1987, following the 5th Session of the Committee in April 1987, and were inscribed in the UNESCO Memory of the World Register in 2001,

Hoping that the close cooperation in the field of culture between the two countries will facilitate the solution of the Boğazköy Sphinx issue,

Noting also that the Boğazköy Sphinx was situated at Boğazköy (Hattusha) where it was excavated, which was the capital of the Hittite Empire and is currently inscribed in the UNESCO World Heritage List,

1. *Expresses* its hope that the pending request of Turkey with regard to the issue of the Sphinx will be solved through bilateral negotiations,
2. *Takes note* of the fact that the last bilateral negotiations on this issue took place on 19 November 2002 in Berlin, without reaching a solution,
3. *Takes note* that the Sphinx issue was mentioned during an informal contact between the two parties in March 2010 during the Berlin Tourism Fair,
4. *Invites* both Parties to hold comprehensive bilateral negotiations as soon as possible with a view to bringing this issue to a mutually acceptable solution, and notes that in the margins of this Committee meeting, the Turkish side has proposed to the German side to hold an expert meeting in Ankara by the end of 2010,
5. *Invites* the Parties to keep the Committee informed on the issue,
6. *Also invites* the Director-General to continue her good offices towards the resolution of this issue and to report to the Committee at its seventeenth session.

Recommendation No. 3

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Acknowledging the obstacles faced by many countries in applying for restitution of cultural property, especially when it comes to materials from cultural sites where there is no inventory or provenance documentation, in particular objects coming from illicit excavations,

Recalling the importance for States which claim ownership of certain cultural objects to have a clear and precise legislation to provide a basis for an action to recover the object if it is found in another country,

Reminding the proposals put forward in the framework of the 30th anniversary of the Intergovernmental Committee held in Seoul in 2008, and discussed at the 15th session of the Committee, to assist States in such a purpose,

Welcoming the participation of the International Institute for the Unification of Private Law (UNIDROIT) in this exercise for its expertise in the harmonization of laws,

1. *Stresses* the importance of this issue and encourages the establishment of a working group of independent experts chosen jointly by UNESCO and UNIDROIT Secretariats, in their personal capacity and as far as possible on the basis of a balanced geographical representation,
2. *Encourages* the preparation of model provisions with explanatory guidelines to be made available to States to consider in the drafting or strengthening of national laws,
3. *Requests* the Secretariat to report on the work accomplished by this working group at its 17th session,
4. *Invites* Member States to provide appropriate human and financial support for such work.

Recommendation No. 4

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Recalling 33C/Resolution 44, which added mediation and conciliation to the mandate of the Committee,

Taking note of the progress achieved during the examination of the draft rules of procedure on mediation and conciliation,

1. *Thanks* the Sub-committee and its Chairman Prof. Constantin Economidès for their efforts accomplished to prepare a draft text and to present the results of its work at the 16th session of the Committee,
2. *Adopts* the rules of procedure on mediation and conciliation,
3. *Asks* the Director-General to report on the Rules of procedure adopted to the General Conference of UNESCO at its next ordinary session.

Recommendation No. 5

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

1. *Decides* to hold its 17th ordinary session at UNESCO Headquarters during the first semester of 2011,
2. *Requests* the Director-General of UNESCO to provide the Secretariat with adequate human and financial resources in order to conduct this task in proper conditions.

Recommendation No. 6

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Recalling the importance to support the fight against illicit trafficking of cultural objects through trainings, sensitization tools, documentation, inventories and databases,

Encouraging the continuation and strengthening of the cooperation undertaken by UNESCO, UNIDROIT, INTERPOL, UNODC, WCO, ICOM, the Italian Carabinieri, the OCBC, and other institutions or organizations,

Acknowledging the growth and the upgrading of the UNESCO Cultural Heritage Laws Database website,

Taking note of the absolute need of the INTERPOL Database of Stolen Objects to fight against illicit traffic,

Thanking the Czech Republic, the Netherlands, Switzerland and the United States of America for their substantial and decisive extrabudgetary contributions to the UNESCO activities,

1. *Encourages* States to reinforce the national policies regarding inventories of movable cultural heritage, notably concerning museums, cultural institutions, cultural sites in particular of an archaeological nature and places of worship,
2. *Encourages also* Member States to continue providing the Secretariat with electronic versions of their national cultural heritage legislation and their official translations,
3. *Requests* Member States to widen the dissemination of information on stolen or retrieved cultural heritage to the INTERPOL General Secretariat, encouraging also their local police services to pass on these information to the INTERPOL Bureau in their country,
4. *Invites* Member States to fully cooperate and consider providing additional extrabudgetary funds in these endeavours.

Recommendation No. 7

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Noting the discussions about the challenges concerning the implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property as well as of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects,

Taking note of the necessity to evaluate in particular their effectiveness and their implementation with regard to the new trends in illicit trafficking of cultural heritage, in particular the growing threats to archaeological and paleontological heritage,

1. *Considers* the 40th and the 15th anniversaries of the 1970 UNESCO and 1995 UNIDROIT Conventions as an opportunity to conduct such evaluations,
2. *Regards* these events as a chance to reinforce their effectiveness and elaborate strategies in particular for their better applications,

3. *Requests* the Director General of UNESCO, in cooperation with the UNIDROIT Secretariat, to facilitate the organization of a forum of reflection as soon as possible among UNESCO Member States in particular on the following subjects:
 - a) the effectiveness of the current international legal framework, taking into account that it might be insufficient in the fight against illicit trafficking in cultural property and restitution of cultural property to its countries of origin, in particular that related to archaeological and paleontological objects coming from illicit excavations and looting of archaeological and paleontological sites;
 - b) the contribution and complementarity of other legal instruments for the protection of cultural property and the fight against illicit trafficking;
 - c) The consideration of basic principles in the field of restitution and return of cultural objects which could enrich the work of the Committee as well as the functions of the 1970 UNESCO Convention;
 - d) The convenience of improving the role of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, in particular that related to guiding the planning and implementation of UNESCO's programme of activities with regard to restitution and return of cultural property to its countries of origin.
4. *Calls* upon the Director-General to mobilize the additional extra budgetary funds required for the organization of this forum of reflection.

Recommendation No. 8

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Commemorating the 40 years of the 1970 UNESCO Convention of the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,

1. *Acknowledges* the progress and evolution achieved all those years, especially through the work of the Committee,
2. *Takes note* of the two Conferences organized by UNESCO which took place in Athens in March 2008 and in Seoul in November 2008 and their conclusions in the area,
3. *Takes note* of the Report commissioned by the Secretariat on "Ethical Principles and Legal Rules in the Field of Return of Cultural Properties", which has identified the evolution of some basic principles on the aforementioned issues and presented to the Committee during the 14th extraordinary session, 15th and 16th sessions and their conclusions.