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### REPORT ON THE 2004-2005 ACTIVITIES AND THE THIRTEENTH 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

#### OUTLINE

**Source:** Article 4.8 of the Statutes of the Committee.

**Background:** Since the 32nd session of the General Conference, the Committee has met once, for its thirteenth session, in Paris, from 7-10 February 2005.

**Purpose:** This document gives an overview of the activities undertaken by UNESCO Member States, the Secretariat and other international governmental and non-governmental organizations aimed at curbing illicit trafficking in cultural property, in particular by administrative and legal means, and at facilitating return of such property. It also reports on the debates of the Committee at its thirteenth session concerning such issues as the possibility of expanding the mandate of the Committee to include mediation and conciliation, the draft Principles Relating to Cultural Objects Displaced in Relation to the Second World War, the Model Export Certificate for Cultural Objects and the UNESCO Cultural Heritage Laws Database. The Decision and Recommendations adopted by the Committee are attached.

**Decision required:** This document requires no decision.

## **I. Introduction**

1. The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (hereafter “the Committee”) convened its thirteenth session at UNESCO Headquarters in Paris from 7 to 10 February 2005. Twenty of the twenty-two Committee Members were represented. Sixty-two Member States that are not members of the Committee were also inscribed as Observers, as were two Permanent Observer Missions, six intergovernmental organizations and two non-governmental organizations.

## **II. Opening of the session – election of the Bureau – adoption of the Agenda**

2. The meeting was opened by the representative of the Director-General. Ms Kathryn Zedde (Canada) was elected Chairperson. The representatives of Cameroon, China, Croatia, and Mexico were elected as Vice-Chairpersons, and the representative of Lithuania as Rapporteur. The provisional agenda proposed by the Secretariat was adopted.

## **III. Update since the twelfth session**

3. Pursuant to item 5 of the Agenda, the Secretariat’s Report on developments since the Committee’s previous session (document CLT-2005/CONF.202/2) was presented to the Committee. This report contains updated information on progress on the Recommendations from the twelfth session, the UNESCO 1970 and UNIDROIT 1995 Conventions, as well as on UNESCO’s activities to combat illicit trafficking of cultural property.

4. Members of the Committee (Canada, Croatia, Eritrea, Ethiopia, Greece, Iraq, Mali and Switzerland) and Observer States (Italy, Niger and the United Republic of Tanzania) provided updates on national activities relating to the return/restitution of cultural property.<sup>1</sup> In particular, Ethiopia reported extensively on the very good progress concerning the return of the Aksum obelisk from Italy to Ethiopia, and Italy expressed its wish that UNESCO be involved in the process. The United Republic of Tanzania also reported on a case with Switzerland concerning a request for restitution to Tanzania of a Makonde mask.

## **IV. Review of cases pending before the Committee**

5. Two cases for restitution are pending before the Committee: the request by Greece for the return of the Parthenon Marbles from the United Kingdom, brought before the Committee in 1984; and the request by Turkey for the return of the Boğazköy Sphinx from Germany, brought before the Committee in 1986.

6. Pursuant to Recommendation No. 1 adopted at the twelfth session of the Committee, the Director-General renewed efforts to hold a meeting between Greece and the United Kingdom. The Secretariat attended a meeting that took place between the two countries’ representatives on 4 December 2003 in London. There it was clarified that: (a) because of the legal status of the British Museum which makes it independent in this regard from the British Government, it is the prerogative of the Board of Trustees of the British Museum to determine the disposition of the

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<sup>1</sup> A point was raised by an Observer State and supported by several Members of the Committee concerning Rule 7.6 of the Committee Rules of Procedure which states that the working languages of the Committee shall be Arabic, English, French, Russian and Spanish, yet the simultaneous interpretation has been in English and French for several sessions of the Committee. The Secretariat explained that this is due to budgetary constraints. The Chairperson later raised this concern with the Assistant Director-General for Culture, who also confirmed that unfortunately, this is a continuing practice due to budgetary constraints, noting that working documents are provided in all required languages.

Parthenon Marbles; and (b) the independent status of the British Museum may be changed by a law, but the British Government is not currently considering to revise the legislation on this matter.

7. The Greek Delegate and the British Observer presented the Committee with their respective positions and in particular highlighted the recent increase in discussions and exchanges concerning this issue, which took place independently of UNESCO. The former emphasized the importance of continuing and accelerating bilateral negotiations, and informed the Committee of the new Greek policy pertaining to broader museum and academic/archaeological cooperation between Greece and the United Kingdom. Greece also reported on progress towards the completion of the New Acropolis Museum and encouraged, within the framework of the newly proposed cooperation policy, the co-sponsorship between the British Museum and the New Acropolis Museum for the reunification of the Parthenon Marbles. The Observer from the United Kingdom noted Greece's proposals and suggested that the bilateral negotiations should continue independently of UNESCO, and that the subject does not need to be discussed every two years. The British Observer also reminded the Committee that since the British Museum is independent of the Government, it rests with the Trustees of the British Museum to decide on this matter and that their legal ownership of the Marbles should be acknowledged. Greece and the United Kingdom jointly presented to the Committee a draft recommendation on the Parthenon Marbles that the Committee adopted (Recommendation No. 1).

8. The Boğazköy Sphinx is located in the Berlin Museum. Following Recommendation No. 2 of the previous Committee session, Germany and Turkey were invited to continue meeting “with a view to bringing this issue to a mutually acceptable solution”, and the Director-General was invited to use his good offices to assist. The Secretariat offered to convene a meeting between the two States if they so wished. No meeting took place so far.

9. In his presentation to the Committee, the Turkish Delegate provided some historical background of the case, mentioned returns made in years past by Germany to Turkey of another sphinx and cuneiform tablets, and expressed a desire for progress in negotiations regarding the Boğazköy Sphinx. The German Observer informed the Committee that the Sphinx was inventoried in the Berlin Museum, but that related documentation was destroyed during the Second World War, and that documentation contributing to the legal grounds of this case would be welcomed. Germany has also offered to provide Turkey with a replica of the Boğazköy Sphinx. Turkey and Germany jointly presented to the Committee a draft recommendation that the Committee adopted (Recommendation No. 2).

## **V. The Director-General's strategy to facilitate the restitution of stolen or illicitly exported cultural property**

10. Pursuant to Agenda item 7, the meeting examined and discussed at length document CLT-2005/CONF.202/4 prepared by the Secretariat, and paragraph 9 of document 32 C/Resolution 38 included therein. The Committee discussed a number of initiatives to present to the Director-General for consideration when preparing his Report on this matter to the 171st session of the Executive Board. In particular, the strengthening of the Committee's mandate to include mediation or conciliation processes among its functions relating to the return or restitution of cultural property was discussed in detail and widely supported. Adding this function to the mandate of the Committee would require an amendment of the Committee's Statutes by the General Conference. The meeting wished to consult models of existing United Nations rules concerning conciliation/mediation and was provided with a copy of the United Nations Model Rules for the Conciliation of Disputes between States and the relevant part of the 1996 report of the United Nations International Law Commission concerning the settlement of disputes. In addition, the Legal Adviser of UNESCO reported to the meeting on examples of conciliation/mediation used in the

draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions and in the Biodiversity Convention.

11. It was recalled that conciliation and mediation are not legally binding means of settlement of disputes, whereas arbitration is. The need for consent of the parties to mediation or conciliation and the application of principles of fairness, impartiality and good faith cooperation, as well as cost-sharing for these procedures were highlighted in this context. The person(s) to perform as mediator(s) or conciliator(s) is (are) to be selected by the parties concerned. The meeting felt that the parties concerned should report on the procedure to the following session of the Committee.

12. Promotion of the activities of the Committee and the possibility of the Committee holding mandatory annual sessions were also discussed. The meeting proposed an international conference on return and restitution difficulties and solutions, and Greece offered to host such a meeting if funds were made available. The development of a specific communication strategy was also recommended. Concerning the issue of regular annual sessions of the Committee (32 C/Resolution 38, para. 9(c)), instead of every two years as at present, the Committee did not express a clear preference, and noted that holding meetings annually would have budgetary implications. It was also noted that the current periodicity (Article 6(1) of the Statutes) ensures flexibility as the Committee may wish to convene its ordinary sessions annually should it deem necessary. The Committee, in its Recommendation No. 3, invited the Director-General to take note of its observations when elaborating his strategy to facilitate the restitution of stolen or illicitly exported cultural property.

## **VI. The model export certificate for cultural objects**

13. The Secretariat provided the history and *raison d'être* of the Model Export Certificate for Cultural Objects, noting essentially that it was developed jointly by UNESCO and the World Customs Organizations (WCO) as a tool to combat illicit trafficking in cultural property. The Secretariat also reported that UNESCO's Director-General and the Secretary-General of the WCO planned to send a joint letter to their respective Member States recommending them to adopt in its entirety or in part the Model Export Certificate for Cultural Objects as their national export certificate. The discussion reviewed the similarities between the model certificate and that required by the European Union, the possibility of forgery, the number of copies of the certificate, and the relevance of having the exported objects insured. INTERPOL expressed support for the wide adoption of the model export certificate. The meeting also favoured, in general, its use as reflected in Recommendation No. 6, supporting the Model Export Certificate for Cultural Objects.

## **VII. The draft Principles Relating to Cultural Property Displaced During the Second World War**

14. A presentation was given by the Secretariat on the elaboration of the "Principles Relating to Cultural Objects Displaced in Relation to the Second World War" (hereafter "the Principles"). This included reference to the results of two expert meetings, the consideration of this item by the twelfth session of the Committee, the invitation to UNESCO Member States to comment on the Principles, and procedural aspects related to whether these should be adopted by the Committee and/or submitted to the General Conference. The Secretariat also presented document CLT-2005/CONF.202/INF.1 consisting of an update on comments received on the Principles.<sup>2</sup> It was reiterated that the Principles are non-binding but designed to facilitate bilateral inter-state

<sup>2</sup> Document CLT-2005/CONF.202/INF.1 contains the written comments of four States (Canada, Germany, Greece and the Republic of Korea). However, during the Committee's session four additional States (Czech Republic, Estonia, Hungary and South Africa) submitted written comments that were circulated in the room.

negotiations, and are not in a position to amend or abrogate existing bilateral or multilateral agreements on this subject.

15. Several positions emerged during the discussion. One position was that the Committee could review, redraft and adopt or endorse the Principles during the current session via an open-ended drafting group or the setting up of a subcommittee of the Committee. This would then leave the Committee with two further options: one to simply disseminate the Principles as adopted by the Committee; the second to go further and submit the Principles to the General Conference for consideration and adoption, and thereafter disseminate them as UNESCO's Principles. A second position was that the Principles require inputs from UNESCO Member States particularly involved in the Second World War and that the necessary redrafting would require an intergovernmental meeting. This position would then lead to the submission of the revised Principles to the General Conference for consideration and possible adoption. Overall the meeting expressed a preference for the Principles to be ultimately submitted to the General Conference for examination. The Legal Advisor provided clarifications as to the characterization of the Principles and the procedure to be followed.

16. The meeting noted that there have been other situations, such as the colonial era, that have resulted in significant losses of cultural property. The Committee observed that while these Principles pertain only to the specific situation of World War II, other similar sets of principles could be developed in future to assist States in resolving disputes related to other periods of history that saw massive displacement of cultural property from its countries of origin.

17. Members discussed the terminology of “shall” or “should” in the Principles, noting that the Principles are meant as guidance and not as obligations. The Committee decided to put in brackets the terms “shall/should”, to reflect the fact that the Principles are to be considered as draft Principles, although the Committee decided to approve them in principle as presented. At the end of the discussion, the Committee decided to invite the Director-General “to inscribe on the draft agenda of the thirty-third session of the General Conference a point for discussion on the draft Principles and Member States’ observations as compiled by the Secretariat, for consideration, final revision and possible adoption of those draft Principles, and recommends that appropriate intergovernmental meetings be held before their adoption”. Finally, the Committee invited Member States “to forward to the Secretariat by 1 June 2005 their observations on the draft Principles for consideration in a compiled form by the General Conference at its thirty-third session”. Recommendation No. 4 adopted by the Committee reflects these points.

### **VIII. Launch of the UNESCO Cultural Heritage Laws Database**

18. The UNESCO Cultural Heritage Laws Database (hereafter “the Database”) was officially launched at this session of the Committee. The Secretariat presented the Database live, online, providing its web address: [www.unesco.org/culture/natlaws](http://www.unesco.org/culture/natlaws), and explaining its structure, contents and functioning (provided in English, French and Spanish). Twenty States that responded to the Director-General's Circular Letter 3694 of December 2003 and provided their cultural heritage legislation in electronic format have their legislation available on the Database. The Committee expressed its satisfaction with this initiative, noting that it would provide a useful tool in the fight against illicit trafficking of cultural property and facilitating its restitution. The meeting emphasized the need for all countries to provide their legislation in electronic format for inclusion in the Database, to produce official translations of such texts (primarily into English and French), the need for the regular updating of the information on the Database, and for its promotion. Recommendation No. 5 was adopted on this item.

## **IX. The Fund of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (“the Fund”)**

19. The Secretariat informed the meeting that the Fund, whose Operational Guidelines were adopted at and distributed following the Committee’s last session, remained inactive, with 29,342 Euros (donated by Greece) still unutilized. As requested by the twelfth session of the Committee, the Secretariat prepared an explanatory note on the procedure to be followed for the assessment of the submitted projects pursuant to the Operational Guidelines of the Fund (document CLT-2005/CONF.202/3). This document was carefully examined, revised and adopted (Annex I). Points of discussion included the possibility for projects to be submitted in one of the six languages of the General Conference and the need to promote the Fund.

## **X. Presentations and related discussions**

20. Valuable presentations concerning the fight against illicit trafficking in cultural property and related return and restitution matters were made.

### **UNIDROIT**

21. The representative from the Institute for Unification of Private Law (UNIDROIT) provided specific information on the 1995 Convention on Stolen or Illegally Exported Cultural Objects, its distinguishing features from the UNESCO 1970 Convention, and an update on new States Parties to the UNIDROIT Convention (now numbering 24).

### **INTERPOL**

22. The representative from the International Criminal Police Organization (INTERPOL) presented the work of INTERPOL with regard to the theft of cultural objects, including the database of stolen works of art, the telecommunications network and the need for their Member countries to provide regular statistics and information on art thefts. The specific work of INTERPOL concerning Iraqi and Afghani cultural property was also presented (reference is made below).

### **ICOM**

23. The Secretary General of the International Council of Museums (ICOM) provided background on specific ICOM initiatives and practices relating to the fight against illicit trafficking. After noting the importance of an adequate national framework for the legal protection of cultural heritage being in place as well as adherence to the relevant international conventions, he discussed the use of tools such as ethical professional conduct and the ICOM Code of Ethics, public awareness and education, proper documentation and registration of objects, and proper protection and security for museums and archaeological sites. The publication/dissemination of the *100 Missing Objects* series and the *ICOM Red Lists*, ICOM partnerships with UNESCO, INTERPOL and the World Customs Organization, and the promotion of the Object ID Standard were also discussed.

### **Afghanistan and Iraq**

24. The Secretariat provided a detailed presentation of UNESCO’s efforts to retrieve and restore Afghan cultural heritage, including the reconstruction of the Kabul National Museum and

campaigns to raise public awareness on the trade of illicitly trafficked Afghan cultural heritage. UNESCO and INTERPOL discussed their cooperation in providing information on objects stolen from the Kabul Museum for inclusion in the INTERPOL database.

25. The Secretariat also gave a detailed presentation of UNESCO's efforts towards the protection and restitution of Iraqi cultural heritage. This included the UNESCO expert missions to Iraq, the International Coordination Committee for the Safeguarding of the Cultural Heritage of Iraq, projects under the United Nations Development Group Trust Fund for Iraq, and the Object ID Training Workshop for Iraqis. The representative of the Italian Carabinieri Command for the Defence and Protection of Cultural Heritage presented the work of the Carabinieri in Iraq. The INTERPOL representative presented related activities, in particular the database of stolen Iraqi cultural property, the creation of the INTERPOL Experts Group on Stolen Cultural Property (both established with UNESCO's partnership), and the INTERPOL Task Force for the Tracking of Iraqi Stolen Cultural Property.

26. The Delegates of Afghanistan and Iraq (with Members of the Committee) prepared a draft recommendation on the cultural heritage of Afghanistan and Iraq concerning the implementation of initiatives (training and technical resources) aimed at strengthening their national capacities to protect it. Following the discussion, the Committee adopted Recommendation 8 thereon.

#### **XI. Adoption of recommendations and closure of the meeting**

27. Nine draft recommendations were considered and amended as necessary during the debate, and were adopted by the Committee (Annex II). The Director-General closed the session.

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

Thirteenth Session

7-10 February 2005, Paris

**Decision, 10 February 2005**

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

Recalling Recommendation No. 6 adopted during the 12th session of the Committee (March 2003), that “invites the Director-General to prepare an explanatory note on the procedure to be followed for the assessment of the submitted projects pursuant to the Operational Guidelines of the Fund”,

Taking note of the Guidelines of the Fund adopted during the 12th session of the Committee (March 2003),

1. Decides to adopt as Procedure to be followed for the Assessment of the Submitted Projects pursuant to the Operational Guidelines of the Fund, the Procedure (CLT-2005/CONF/202.3), as amended during the thirteenth session of the Committee.



**PROCEDURE TO BE FOLLOWED FOR THE ASSESSMENT OF PROJECTS  
FOR THE FUND OF THE INTERGOVERNMENTAL COMMITTEE  
FOR PROMOTING THE RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES  
OF ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION**

1. Upon receipt of a project by the Secretariat on behalf of the Committee, its receipt will be acknowledged and it will receive a registration number. The Secretariat shall inform the Chairperson of the Committee and the Director-General about it.
2. A project should be sent in one of the six languages of the General Conference, it will be considered after having been translated into one of the working languages of the Secretariat.
3. The Secretariat will assess whether the documentation and information provided to support the project is sufficient to be considered by the Committee pursuant to the Fund Guidelines, and in particular whether the requisite criteria and conditions for submitting projects set forth in Sections II and III have been met. If not, the Secretariat will contact the entity that submitted the project and request complementary documentation and information.
4. Once the documentation and information are deemed sufficient according to point 3 above, the Secretariat will prepare a pre-assessment of the project in terms of its possible compliance with the Fund Guidelines, in particular their criteria and conditions.
5. The Secretariat will communicate this pre-assessment to the Members of the Committee prior to its next scheduled session for consideration and final assessment and decision by the Committee at that session.
6. If the project is presented for emergency funding pending the forthcoming session of the Committee, and such emergency is confirmed in the assessment by the Secretariat of the information and documentation provided (point 3 above), the pre-assessment by the Secretariat will be accelerated and its results submitted directly to the Chairperson of the Committee for consideration and possible decision (up to a maximum amount of US \$10,000 as per Section III of the Fund Guidelines). The Chairperson will notify the Secretariat in writing of the decision taken.
7. The Secretariat will duly inform the entity that submitted the project of the final decision of the Committee or, for emergency projects, of the Chairperson. The Chairperson will report on the matter of emergency projects to the next session of the Committee.
8. For any approved project, the Secretariat will inform the Director-General, confirm acceptance of the project to the entity that submitted the project, and undertake the transfer of the granted assistance and/or funds to the entity.
9. For any approved project, the entity that submitted the project must present the Report on Activities Completed, written in one of the six languages of the General Conference, to the Committee by its next scheduled meeting or at any other date fixed by the Committee.

## ANNEX II

### 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

##### Thirteenth Session

7-10 February 2005, Paris

##### **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,*

Expressing its concern for the resolution of the issue of the Parthenon Marbles,

Acknowledging past UNESCO Recommendations regarding the return of the Parthenon Marbles in London to their country of origin,

1. Takes note of the meeting between the Greek and UK Ministries of Culture attended by a UNESCO representative in 2003, and a meeting in 2005;
2. Takes note of the continuing co-operation between the British Museum and Greek museums which will serve as a model for a collaboration on the display and presentation of the Parthenon Marbles;
3. Takes note of the construction of the new Acropolis museum; and
4. Invites the Director-General:
  - (a) to encourage further exchange of expert information in the areas of understanding, research and museology; and
  - (b) to assist in facilitating further meetings between the United Kingdom and Greece before the next session of the Committee, with a view to resolving the issue of the Parthenon Marbles, taking into account at the same time the sensitivities of both sides.

##### **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 Recommendation No. 2 adopted by the Committee on this question at its sixth, tenth, eleventh and twelfth sessions,

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

Noting also that the 7,400 cuneiform tablets which were part of the original request of 1987 of Turkey to the German Democratic Republic were returned,

Expresses its hope that the pending request of Turkey with regard to the issue of the Sphinx will be solved through bilateral negotiations,

Takes note of the fact that bilateral negotiations took place on this issue on 19 November 2002 in Berlin, without reaching a solution,

1. Invites both Parties to continue comprehensive bilateral negotiations with a view to bring this issue to a mutually acceptable solution;
2. Also invites the Director-General to continue his good offices towards the resolution of this issue and to report to the Committee at its fourteenth 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,*

Considering Resolution 38 of the 32nd session of the UNESCO General Conference, inviting the Director-General *inter alia*, to present to the UNESCO Executive Board a strategy to facilitate the restitution of stolen or illicitly exported cultural property, and which in Paragraph 9 makes specific references to the mandate and functioning of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation,

Noting that the Director-General felt that it would be more effective to have the Committee's observations on 32 C/Resolution 38 with a view to considering them when elaborating a strategy to submit to the 171st session of the Executive Board,

Recalling the current mandate and functioning of the Committee as set forth in the Statutes and Rules of Procedure of the Committee,

1. Invites the Director-General to take note of the following observations when elaborating a strategy to facilitate the restitution of stolen or illicitly exported cultural property pursuant to 32 C/Resolution 38:
  - (a) The Committee is supportive of the proposition to strengthening its mandate, *inter alia* in terms of proposals of mediation and conciliation. While acknowledging that such procedures require the consent of both parties concerned to enter into the process, and are not binding on them, these tools can expand the role of the Committee and provide UNESCO Member States with more options from which to choose, without prejudice to still other means of resolving disputes concerning the return or restitution of cultural property.

- (b) The mediation or conciliation procedure can be initiated in one of two ways: either by the concerned parties following a recommendation by the Committee, or directly by the concerned parties.
- (c) The role of mediator may be conferred on one or more individuals, which the concerned parties choose, and could include but not be limited to any of the following:
  - (i) a representative of one or more State(s) Member(s) of the Committee;
  - (ii) a qualified representative of the UNESCO Secretariat; or
  - (iii) an outside person(s), institution, or other body pre-selected by the Committee.
- (d) Available, recognized models for settlement of disputes should be considered for useful characteristics that could be drawn from them if rules of conciliation specific to cases of return or restitution of cultural property are to be developed.
- (e) The role of conciliator should be conferred on an individual or group of individuals chosen by the parties for that purpose, rather than on the Committee as a whole or the Secretariat.
- (f) The mediation and conciliation procedures should be autonomous and not prejudice other like procedures. They should be conducted with confidentiality, transparency, and according to the general principles of fairness, impartiality, and good faith cooperation, and those of international cultural property law. The parties agreeing to this procedure should participate in a motivated, loyal, responsible manner and should equally share the responsibility of its success or lack thereof.
- (g) The parties participating in a mediation or conciliation procedure should equally bear the costs thereof unless the services of the mediator or conciliator are provided on a voluntary basis, the costs are covered by another organization, or the parties make some other agreement on sharing costs.
- (h) A time limit, beyond which the issue that has not been resolved will no longer be considered subject to conciliation and mediation, should not be set by the Committee. However, the body or individual conducting the mediation or conciliation procedure may, with the agreement of the parties involved, set a time limit for the specific procedure under way. The parties concerned shall report on the procedure to the following session of the Committee.
- (i) Promotion of the activities of the Committee could be ensured by, *inter alia*:
  - (i) Information dissemination (publications, websites and media exposure);
  - (ii) Publicizing eventual use and success of the International Fund of the Committee;
  - (iii) Hosting an international conference on return and restitution difficulties and solutions (if funds are made available);
  - (iv) Developing regional frameworks to guide the organization of national and regional seminars in the field of return and restitution of or illicit trafficking in cultural property;

- (v) Developing a communications strategy to raise the attention of the media and the public at large and engage them in a proactive manner.
- (j) With respect to mandatory annual sessions of the Committee, no clear preference was expressed.

#### **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 Recommendation No. 7 adopted by the Committee at its tenth session which, among other things, invited the Director-General to convene a working group of experts on the settlement of disputes concerning cultural objects displaced in relation to the Second World War,

Noting that two meetings of experts (Paris, May 2000 and December 2002, respectively) on this issue resulted in the elaboration of non-legally binding (soft law) draft Principles relating to Cultural Objects Displaced in Relation to the Second World War (hereafter “draft Principles”),

Further noting that following Recommendation No. 7 adopted by the Committee at its twelfth session which, among other things, invited all UNESCO Member States to provide the Secretariat with their observations on the draft Principles in order to make them available for the thirteenth session of the Committee, the Secretariat then received nine sets of observations,

Thanking the States that provided comments for their observations,

Emphasizing that the main aim of the draft Principles is to facilitate bilateral or multilateral negotiations of the settlement of disputes concerning cultural objects displaced in relation to the Second World War and that they are not intended to replace, modify or abrogate existing bilateral or multilateral agreements on this subject,

Acknowledging the richness of, and the varied positions that emerged in, the discussion on this sensitive and complex subject,

1. Approves in principle the draft Principles as they stand, and takes note of the discussion thereon as well as the written comments provided by UNESCO Member States pursuant to the above-mentioned Recommendation No 7 (adopted at the twelfth session);
2. Invites the Director-General, when transmitting the report of the Committee to the General Conference, to inscribe on the draft agenda of the thirty-third session of the General Conference a point for discussion on the draft Principles and Member States’ observations as compiled by the Secretariat, for consideration, final revision and possible adoption of those draft Principles, and recommends that appropriate intergovernmental meetings be held before their adoption;
3. Invites all Member States to forward to the Secretariat by 1 June 2005 their observations on the draft Principles for consideration in a compiled form by the General Conference at its thirty-third session;
4. Decides to submit to the thirty-third session of the General Conference the draft Principles for consideration, final revision and possible adoption.

## **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,*

Aware that international availability of national cultural heritage legislation is a priority as it offers better protection to cultural property,

Recalling Recommendation No. 5 adopted by the Committee at its 12th session which, among other things, invited the Director-General to establish and maintain on the UNESCO website a legislation database that includes cultural heritage legislation from all Member States as well as links to their relevant websites, request Member States to cooperate fully in this endeavour, and provide legal translations of submitted legislation primarily into French and English for inclusion in the database,

Noting that the project of the creation of the legislation database received wide support in Commission IV of the thirty-second General Conference,

Noting further the Director-General's Circular Letter 3694 of December 2003 which announced the establishment of the UNESCO Cultural Heritage Laws Database and invited UNESCO's Member States to provide to the Secretariat in electronic format their cultural heritage legislation, import and/or export certificate where appropriate, official translations of legislation as available, contact information and website links, along with authorization for inclusion of the foregoing on the Database,

1. Invites the Director-General to:

- (a) further promote in all possible ways the UNESCO Cultural Heritage Laws Database, including the creation of a budgetary line in the UNESCO ordinary budget for the Culture Sector in order to ensure on a regular basis the necessary human and financial resources for the development and maintenance of the UNESCO Cultural Heritage Laws Database, especially for the translation of texts not submitted in English or French;
- (b) send on a regular basis a reminder letter to Member States inviting them to submit their legislation if they have not already done so, and for those Member States that have submitted legislation, to confirm that what is on the website is still current and correct information;

2. Invites UNESCO's Member States to:

- (a) support the creation of a priority budgetary line in UNESCO ordinary budget for the Culture Sector in order to ensure on a regular basis the necessary human and financial resources for the development and maintenance of the UNESCO Cultural Heritage Laws Database;
- (b) provide extra budgetary contributions to UNESCO Cultural Heritage Laws Database;
- (c) provide the Secretariat with electronic versions of their national cultural heritage legislation in conformity with the Director-General's Circular Letter 3694;
- (d) ensure that any amendment to, change in or adoption of new legislation in this field are provided to the Secretariat in order that the UNESCO Cultural Heritage Laws Database is kept up-to-date;

- (e) provide official legal translations of their legislation into other languages, primarily French and English, for inclusion in the database.

### **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,*

Aware of the Memorandum of Understanding signed in 2000 between UNESCO and the World Customs Organization that provides a framework for cooperation to combat illicit trafficking in cultural property,

Considering the practical and legal benefit that a model export certificate for cultural objects would bring to States in the fight against illicit trafficking in cultural property in general, and to customs officers specifically in their work, if it is extensively adopted world wide and therefore operates as a standard,

Noting the joint work of the UNESCO and World Customs Organization Secretariats in elaborating the Model Export Certificate for Cultural Objects and corresponding Explanatory Notes,

1. Invites the Director-General to promote the Model Export Certificate for Cultural Objects and its Explanatory Notes and to recommend to UNESCO Member States to consider adopting it as they deem appropriate;
2. Invites UNESCO's Member States to consider:
  - (a) adopting, in its entirety or in part, the Model Export Certificate for Cultural Objects as their national export certificate within the ambit of their national law for such specific objects; and
  - (b) providing specialized training to customs and police officials dealing in the movement of cultural objects so as to facilitate a diligent surveillance and control thereof;
3. Invites UNESCO Member States to report to the Secretariat information concerning the application of the Model Export Certificate for Cultural Objects.

### **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,*

Considering Resolution 27 of the 30th session of the UNESCO General Conference inviting the Director-General to establish the "Fund of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation" (hereafter "the Fund") within UNESCO financed by voluntary contributions and designed to finance specific projects submitted to the Committee,

Recalling the Director-General's 2001 Appeal for donations to the Fund,

Thanking the Greek Government for the first financial contribution to the Fund,

Further considering the Operational Guidelines, Sample Project Document and Model for the Presentation of Projects adopted by the Committee during its 12th session, as well as the Procedure to be Followed for the Assessment of Projects adopted by the Committee at its 13th session,

1. Invites UNESCO Member States and others to make voluntary donations to the Fund;
2. Invites the Director-General to continue to ensure the effective promotion and management of the Fund;
3. Invites the Director-General to produce a promotional brochure that will raise awareness of the Fund so as to encourage contributions to the Fund, and to explain the conditions and procedure for presenting a project thereto.

### **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,*

Recalling the gravity of the post-conflict situations in Afghanistan and Iraq,

Reiterating the importance of the follow-up of these situations,

Encouraging the strengthening and continuation of the initiatives already undertaken by UNESCO, INTERPOL, the Italian Carabinieri, etc.,

1. Invites the Director-General in the case of Iraq to:
  - (a) establish a group of international experts who will evaluate the situation of the most important sites;
  - (b) reinforce the implementation of initiatives already established including:
    - (i) the delivery of technical means (communication and transportation) to endangered sites;
    - (ii) the training of personnel responsible for protection of cultural heritage; and
    - (iii) the database, which UNESCO will make available to States, organizations and interested bodies;
2. Invites the Director-General in the case of Afghanistan to:
  - (a) facilitate the delivery of technical means (communication and transportation) to endangered sites;
  - (b) contribute to the training of personnel responsible for protection of cultural heritage; and
  - (c) reinforce the implementation of initiatives already established including:
    - (i) the group of international experts, who will evaluate the situation of the most important sites; and



- (ii) the database, which UNESCO will make available to States, organizations and interested bodies;

3. Invites the Secretariat to provide a comprehensive report on the above to the next session of the Committee.

### **Recommendation No. 9**

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

Recalling its role to foster public information campaigns on the real nature, scale and scope of the problem of restitution or return of cultural property to its countries of origin,

Concerned by the continuing and increasing illicit traffic in cultural property and the need for a more concerted, multi-level effort to combat this problem,

Noting the increasing number of requests for the return or restitution of cultural property based on both moral and legal grounds and the need for more intense action and discussion at the national, regional, and international levels on these matters,

1. Invites the Director-General to examine the possibility of financing an international conference of experts and actors in the field of return and restitution of cultural property to analyse the existing legal and moral grounds associated with this issue, identify appropriate reinforcement of the existing legal and practical tools for and growing trends in this field, and propose future action thereon, noting the generous offer of the Greek Government to be the venue;
2. Invites Member States to:
  - (a) if they have not yet become party to the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the UNIDROIT 1995 Convention on Stolen or Illegally Exported Cultural Objects, consider doing so;
  - (b) provide to the Secretariat detailed information on any successfully concluded case of return or restitution of cultural property, whether procured through bilateral negotiation or legal proceeding;
  - (c) make use of the Object ID standard and in particular encourage the photographing of cultural property, and wherever possible develop more thorough, scientific inventories of cultural property;
  - (d) raise public awareness of the problem of illicit trafficking of cultural property and promote the International Code of Ethics for Dealers in Cultural Property; and
  - (e) examine the possibility of establishing concrete mechanisms or activities to create and implement regional networks for the restitution of cultural property to its countries of origin in close cooperation with law enforcement agencies (e.g. INTERPOL) under the auspices of UNESCO.