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la science et la culture

Organización  
de las Naciones Unidas  
para la Educación,  
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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**

**Eighteen Session**  
**Paris, UNESCO Headquarters, Room II**  
**22 June 2012**

**Provisional agenda point 5:** Report on practical tools

Decision required: paragraph 13

## INTRODUCTION

1. The Secretariat reports to the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (hereinafter “the Committee”) at its eighteenth session regarding activities relating to the most recent legal and practical tools created by the Committee; in particular, the Model Provisions Defining State Ownership of Cultural Property, the Rules of Procedure for Mediation and Conciliation as well as the UNESCO Database of National Cultural Heritage Laws

### **I. MODEL PROVISIONS DEFINING STATE OWNERSHIP OF CULTURAL PROPERTY**<sup>1</sup>

2. In response to a growing need to stop the looting of cultural property, the Committee, the UNIDROIT Governing Council and their respective Secretariats have worked together since 2010 to protect cultural property. Such cooperation and coordination is of particular importance for the protection of archaeological objects.

3. In this context and in response to a growing need to standardize the definition of State ownership of those cultural objects yet undiscovered, the UNESCO and UNIDROIT Secretariats convened a group of experts and endowed them with a mandate to draft a text that would appropriately address the subject. The resultant Model Provisions and their explanatory guidelines were made available to the relevant domestic bodies and legislatures to help them establish and recognize State ownership of undiscovered cultural objects.

4. The Model Provisions were designed to be brief, approachable and intelligible. As such, the six provisions carefully articulate the legal status, as applicable to the respective acceding national legislations, of undiscovered cultural property as well as the methods by which it is to be enforced, both domestically and internationally. The principle of inalienability is extended to all cultural property, both discovered and not, through authorised excavation and otherwise.

5. In accordance with the Committee’s fourth recommendation, adopted at its seventeenth session (Paris, 30 June – 1 July 2011), the UNESCO and UNIDROIT secretariats disseminated the model provisions and explanatory notes adopted in July 2011 to Member States, which were invited to take them into account when drafting or strengthening their national legislation.

6. For that purpose, in early 2012, a letter signed jointly by the Director-General of UNESCO and the Secretary-General of UNIDROIT was sent to all Member States of the two organizations, officially transmitting the results of the work performed by the experts under the Committee’s supervision. The official letter included a background description of the project, the model provisions and explanatory notes.

7. As a resource and tool, the Model Provisions are intended to serve as a complement to the implementation of the UNESCO 1970 Convention and the UNIDROIT 1995 Convention. Each State is encouraged to implement the Model Provisions to achieve a standardised understanding of State ownership of cultural property and a better focused effort at its protection. The UNIDROIT and UNESCO secretariats will continue to promote the model provisions at training workshops held worldwide and will call for support from national governments to disseminate and promote this new tool effectively. It is noted, however, that the Model Provisions do not constitute a binding legal instrument.

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<sup>1</sup> <http://www.unesco.org/new/fr/culture/themes/movable-heritage-and-museums/restitution-of-cultural-property/standards-for-ownership/>

## II. RULES OF PROCEDURE FOR MEDIATION AND CONCILIATION<sup>2</sup>

8. The Secretariat is working to develop, for the benefit of States and in close cooperation with several renowned international experts, new tools for non-judicial conflict resolution in matters of cultural property ownership.

9. In addition to the model provisions defining State ownership of cultural property, “a list of potential mediators and conciliators shall be drawn up and maintained by the Secretariat for the information of, and possible use by, the Parties in appointing mediators or conciliators” (Article 2.6 of the Rules of Procedure for Mediation and Conciliation). To that end, each Member State of UNESCO is invited “to nominate two individuals who could fulfil the role of mediator or conciliator in international cultural property disputes” and to communicate the names to the Secretariat. The list of the experts’ names is annexed to this document. All States that have not yet done so are expressly invited to appoint two representatives to discharge these functions. The list is reviewed every two years.

## III. UNESCO DATABASE OF NATIONAL CULTURAL HERITAGE LAWS (Recommendation No. 6)

10. Launched in 2005 at the thirteenth session of the Intergovernmental Committee, this database – which contributes to the cultural-heritage protection programme and the fight against the looting, theft and illicit traffic of cultural property – is still operational owing to extrabudgetary contributions from the United States of America. It currently comprises 2,367 national cultural laws from 180 countries. The texts are all available online at <http://www.unesco.org/culture/natlaws>.

11. In order to make the database known to as wide a public as possible, it is described systematically at meetings, conferences and training workshops on the protection of cultural heritage. Since 2011, in order to continue to raise the profile of the database effectively, its content has been added to the World Heritage Centre’s States Parties web pages ([whc.unesco.org](http://whc.unesco.org)), the aim being to increase the number of users. Moreover, two consultants are working specifically to promote this tool in Africa, Latin America, Asia, the Arab States and Europe.<sup>3</sup>

12. States are still strongly encouraged to submit their national cultural heritage legislation to the Secretariat for inclusion in the database.<sup>4</sup> The Secretariat recently received new texts and updates from Armenia, Cambodia, Germany, India, the Netherlands, Poland and the United Kingdom. In addition to updating incoming texts regularly, the Secretariat continues to inform Member States and the public of the existence of this tool. To that end, a brochure was drafted and published in the six languages of the Organization in 2009. It is also available online, together with a glossary of keywords. The updates, translations and publications are funded by the Department of State of the United States of America.

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<sup>2</sup> <http://www.unesco.org/new/fr/culture/themes/movable-heritage-and-museums/restitution-of-cultural-property/mediation-and-conciliation/>

<sup>3</sup> Some institutions have created a link to the Database on their Websites (*the National Archaeological Museum in Athens*, *SAFE/Saving Antiquities for Everyone* (blog), *the Cultural Property Observer* (blog) and *the Museum Anthropology Blog*).

<sup>4</sup> States are invited to provide information officially to UNESCO in electronic format (on diskette, CD-ROM or email), together with official written authorization from the competent national authority so that UNESCO may reproduce the legislation and the export/import certificates on its website and insert a link between the website and the official national website, unless it is expressly specified that such a link is barred or not desired. [www.unesco.org/culture/natlaws](http://www.unesco.org/culture/natlaws)

**IV. DRAFT RECOMMENDATION 18.COM 5**

13. In view of the foregoing, the Intergovernmental Committee may wish to adopt the following recommendation:

The Intergovernmental Committee,

1. *Having examined document ICPRCP/12/18.COM/5 ;*
2. *Takes note of the aforementioned document.*

## ANNEX

### LIST OF MEDIATORS AND CONCILIATORS NOMINATED BY THEIR COUNTRIES

- Belgium: Mr. Johan Erauw  
Mr. Pierre De Maret
- China: Mr. Jianxin Zhang  
Ms. Ye Zhu
- Guatemala: Mr. Alfonso Ortiz Sobalvarro  
Mr. Juan Carlos Melendez
- Mexico: Dr. Jorge Sánchez Cordero  
Mr. Eduardo Matos Moctezuma
- Rwanda: Mr. Marcel Kabanda  
Mr. Jean Mukimbiri
- Turkey: Ms. Sibel Özel  
Ms. Esra Gül Dardagan Kibar