

**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**

UNESCO Headquarters, Paris  
7-10 February 2005

**WORKING DOCUMENT FOR DISCUSSION  
ON A STRATEGY TO FACILITATE THE RESTITUTION  
OF STOLEN OR ILLICITLY EXPORTED CULTURAL PROPERTY**

1. At the 32nd session of the General Conference (October 2003), Member States adopted Resolution 38, which in paragraph 9 invited the Director-General, *inter alia*, to present a strategy to facilitate the restitution of stolen or illicitly exported cultural property by, among other things, strengthening the mandate of the Intergovernmental Committee Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (“the Committee”) in various ways. The text of 32 C/Resolution 38 is attached hereto in Annex I for reference.
2. Bearing in mind that the Committee meets every two years and is convening its 13th session in February 2005, the Director-General felt that it would be more effective to have the Committee’s observations on 32 C/Resolution 38 so as to report them to the 171st session of the Executive Board session (April 2005) with a view to a future strategy to facilitate the restitution of stolen or illicitly exported cultural property.
3. The present document was prepared by the Secretariat to assist the Committee in its reflection upon paragraph 9 of 32 C/Resolution 38. The Statutes of the Committee (reproduced in Annex II) should be referred to when reviewing this document.
4. The functions of the Committee are set forth in Article 4 of the Committee Statutes. These include primarily seeking ways and means of facilitating bilateral negotiations for, and promoting multilateral and bilateral cooperation with a view to, the restitution or return of cultural property, as well as fostering a public information campaign on the issue, and promoting exchanges of cultural property.
5. The General Conference, by 32 C/Resolution 38, paragraph 9, invited the Director-General, *inter alia*, “to present to the Executive Board at its 170th session a strategy to facilitate the restitution of stolen or illicitly exported cultural property by:
  - (a) strengthening the mandate of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit

Appropriation, *inter alia* in terms of proposals of mediation and conciliation for Member States;

- (b) promoting the activities of the Committee in respect of awareness-raising at regional, subregional and national levels;
- (c) convening its sessions annually”.

6. Any amendment to the existing Statutes of the Committee (adopted in 1978 by Resolution 4/7.6/5) would require a resolution by the General Conference.

7. Reference to “mediation and conciliation” as proposed in paragraph 9(a) of 32 C/Resolution 38 would extend the existing functions of the Committee as referred to in Article 4 of its Statutes. “Mediation” implies the intervention of an outside party to bring the concerned parties to a dispute together and assist them in reaching a solution, while under “conciliation”, the concerned parties agree to submit their dispute to a constituted organ for investigation and efforts to effect a settlement. In either case, the parties to the dispute must agree to participate in the mediation or conciliation exercise. However, contrary to arbitration and judicial ruling, conciliation and mediation are not binding and not judicial means of dispute settlement. Terms of settlement recommended by the third party are not obligatory for the States concerned, as they may reject it and have recourse to other peaceful dispute settlements mechanisms in the spirit of Articles 2 (3) and 33 of the United Nations Charter.

8. Should Member States decide to amend the Committee’s Statutes to add the functions of mediation and conciliation, operational and procedural matters relating to exercise of these functions will need to be defined. This could imply, *inter alia*, determining:

- The procedure by which mediation or conciliation is initiated (i.e. by request of the concerned parties or upon a recommendation of the Committee);
- Who would conduct the mediation or conciliation activity (i.e. the Committee as a whole, a representative of one or more State(s) Member(s) of the Committee, a qualified representative of the UNESCO Secretariat serving the Committee, or an outside person or persons selected by the Committee);
- The rules by which the conciliation or mediation process would be conducted, according to the general principles of fairness, impartiality and good-faith cooperation;
- Whether a time limit should be set, beyond which the issue that has not been resolved will no longer be considered subject to conciliation and mediation.

9. Promotion of the activities of the Committee as proposed in paragraph 9 (b) of 32 C/Resolution 38 could be ensured by, *inter alia*:

- Information dissemination (publications and websites);
- Publicizing eventual use and success of the International Fund of the Committee;
- Hosting an international conference on return and restitution difficulties and solutions (if funds are made available).

10. It should be recalled that currently the Committee meets “in regular plenary sessions at least once, and not more than twice every two years” (Article 5 of the Statutes). Thus if the Committee

deems it necessary, it can already convene two sessions in a two-year period. Should the Member States decide to convene Committee sessions annually as proposed in paragraph 9(c) of 32 C/Resolution 38, it should be noted that sessions usually take place at UNESCO's Headquarters, occasionally in a Member State, and run four days. Each State Member of the Committee covers the expenses for the participation of its representative. Important preparatory work, organization and administration are undertaken by the Secretariat. Additionally, Article 5 of the Statutes would need to be amended accordingly and adequate financial and human means should be envisaged.



**ANNEX I**

**Text of 32 C/Resolution 38**

**Implementation of the Convention on the Means of Prohibiting and Preventing  
the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970):  
Reports by Member States and other States Parties on the action  
they have taken to implement the Convention**

*The General Conference,*

*Having considered* the reports of States on the action taken by them to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) (32 C/24 and Add., Add.2, Add.3 and Corr.),

*Recognizing* the importance and value of such action and the complementary activities undertaken by the Director-General,

*Noting with satisfaction* that the symbolic number of 100 deposits of instruments of ratification or acceptance of the Convention has been reached as at 1 July 2003,

*Considering* that action against illicit traffic in cultural property urgently needs to be strengthened at the national as well as the international level,

1. *Invites* the States which are not yet Parties to the 1970 Convention and to the 1995 UNIDROIT Convention, which complements it, to accede to them;
2. *Reminds* States Parties of their obligations under the 1970 Convention in respect of effective implementation, and in particular their obligation to report under its Article 16;
3. *Sets* the periodicity for reporting at four-year intervals with reference to Article 16 of the 1970 Convention under which the General Conference determines the dates of reporting;
4. *Requests* the Secretariat to facilitate the work of States Parties in preparing their reports by providing them with a questionnaire and appropriate categories of information and measures to be included in their reports having regard to Article 16 of the 1970 Convention under which the General Conference determines the manner of reporting;
5. *Emphasizes* that the content of such reports should be as detailed as possible to enable an accurate understanding and evaluation of the implementation of the 1970 Convention;
6. *Encourages* States Parties to the 1970 Convention to assess the adequacy and effectiveness of national measures undertaken to implement the Convention so that areas of weakness may be identified and appropriate adjustments or improvements made;
7. *Invites* Member States and the Director-General to pursue activities aimed at strengthening regional and worldwide cooperation, particularly by concluding agreements and encouraging an international system to facilitate the restitution of stolen or illicitly exported cultural property;

8. *Also invites* Member States and other States Parties to the 1970 Convention to submit for examination to the General Conference at its 34th session a new report on the measures taken by them in application of the Convention, after their examination by the Executive Board;
9. *Further invites* the Director-General to present to the Executive Board at its 170th session a strategy to facilitate the restitution of stolen or illicitly exported cultural property by:
  - (a) strengthening the mandate of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, *inter alia* in terms of proposals of mediation and conciliation for Member States;
  - (b) promoting the activities of the Committee in respect of awareness-raising at regional, subregional and national levels;
  - (c) convening its sessions annually.

## ANNEX II

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

#### **Article 1**

An Intergovernmental Committee of an advisory nature whose services will be available to Member States and Associate Members of UNESCO involved, hereafter called the Committee, whose functions are defined in Article 4 below, is hereby established within the United Nations Educational, Scientific and Cultural Organization, hereafter called UNESCO.

#### **Article 2**

1. The Committee shall be composed of 22 Member States of UNESCO<sup>1</sup> elected by the General Conference at its ordinary sessions, taking into account the need to ensure equitable geographical distribution and appropriate rotation, as well as the representative character of those States in respect of the contribution they are able to make to the restitution or return of cultural property to its countries of origin.
2. The term of office of members of the Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its second subsequent ordinary session.
3. Notwithstanding the provisions of paragraph 2 above, the term of office of half of the members designated at the time of the first election shall cease at the end of the first ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference after the first election.
4. Members of the Committee shall be immediately eligible for re-election.
5. States members of the Committee shall choose their representatives with due attention to the terms of reference of the Committee as defined by these statutes.

#### **Article 3**

1. For the purposes of these statutes, “cultural property” shall be taken to denote historical and ethnographic objects and documents including manuscripts, works of the plastic and decorative arts, palaeontological and archaeological objects and zoological, botanical and mineralogical specimens.
2. A request for the restitution or return by a Member State or Associate Member of UNESCO may be made concerning any cultural property which has a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO and which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation.
3. Cultural property restituted or returned shall be accompanied by the relevant scientific documentation.

---

<sup>1</sup> The General Conference of UNESCO adopted, at its 28th session (Paris, October-November 1995), 28 C/Resolution 22 increasing the membership of the Intergovernmental Committee from 20 to 22 Member States.

#### **Article 4**

The Committee shall be responsible for:

1. seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to its countries of origin when they are undertaken according to the conditions defined in Article 9;
2. promoting multilateral and bilateral cooperation with a view to the restitution and return of cultural property to its countries of origin;
3. encouraging the necessary research and studies for the establishment of coherent programmes for the constitution of representative collections in countries whose cultural heritage has been dispersed;
4. fostering a public information campaign on the real nature, scale and scope of the problem of the restitution or return of cultural property to its countries of origin;
5. guiding the planning and implementation of UNESCO's programme of activities with regard to the restitution or return of cultural property to its countries of origin;
6. encouraging the establishment or reinforcement of museums or other institutions for the conservation of cultural property and the training of the necessary scientific and technical personnel;
7. promoting exchanges of cultural property in accordance with the Recommendation on the International Exchange of Cultural Property;
8. reporting on its activities to the General Conference of UNESCO at each of its ordinary sessions.

#### **Article 5**

1. The Committee shall meet in regular plenary session at least once and not more than twice every two years. Extraordinary sessions may be convened as specified in the Committee's Rules of Procedure.
2. Each member of the Committee shall have one vote, but may send to the Committee's sessions as many experts or advisers as it deems necessary.
3. The Committee shall adopt its own Rules of Procedure.

#### **Article 6**

1. The Committee may set up ad hoc subcommittees for the study of specific problems related to its activities, as described in paragraph 1 of Article 4. Membership of such subcommittees may also be open to Member States of UNESCO which are not represented in the Committee.
2. The Committee defines the mandate of any such ad hoc subcommittee.

#### **Article 7**

1. At the beginning of its first session, the committee shall elect a Chairman, four Vice-Chairmen and a Rapporteur; these shall form the Committee's Bureau.

2. The Bureau shall discharge such duties as the Committee may lay upon it.
3. Meetings of the Bureau may be convened in between sessions of the Committee at the request of the Committee itself, of the Chairman of the Committee or of the Director- General of UNESCO.
4. The Committee shall elect a new Bureau whenever its own membership is changed by the General Conference in accordance with Article 2 above.
5. The members of the Bureau who are representatives of Member States of UNESCO shall remain in office until a new Bureau has been elected.<sup>2</sup>

#### **Article 8**

1. Any Member State which is not a member of the Committee or any Associate Member of UNESCO that is concerned by an offer or a request for the restitution or return of cultural property shall be invited to participate, without the right to vote, in the meetings of the Committee or of its ad hoc subcommittees dealing with that offer or request. The States which are members of the Committee that are concerned by an offer or request for the restitution or return of cultural property shall not have the right to vote when such offer or request is being examined by the Committee or its ad hoc subcommittees.
2. Member States and Associate Members of UNESCO which are not members of the Committee may attend meetings of the Committee and of its ad hoc subcommittees as observers.
3. Representatives of the United Nations and other organizations of the United Nations system may take part, without the right to vote, in all meetings of the Committee and of its ad hoc subcommittees.
4. The Committee shall determine the conditions under which international governmental and non-governmental organizations, other than those covered by paragraph 3 above, shall be invited to attend its meetings or those of its ad hoc subcommittees as observers.

#### **Article 9**

1. Offers and requests formulated in accordance with these statutes, concerning the restitution or return of cultural property, shall be communicated by Member States or Associate Members of UNESCO to the Director-General, who shall transmit them to the Committee, accompanied, in so far as is possible, by appropriate supporting documents.
2. The Committee shall examine such offers and such requests and the relevant documentation in accordance with Article 4, paragraph 1, of these statutes.

#### **Article 10**

1. The Secretariat of the Committee shall be provided by the Director-General of UNESCO, who shall place at the Committee's disposal the staff and other means required for its operation.
2. The Secretariat shall provide the necessary services for the sessions of the Committee and meetings of its Bureau and ad hoc subcommittees.

---

<sup>2</sup> Resolution of the 23rd session of the General Conference of UNESCO, adopted on 4 November 1985.

3. The Secretariat shall fix the date of the Committee's sessions in accordance with the Bureau's instructions, and shall take all steps required to convene such sessions.
4. The Committee and the Director-General of UNESCO shall make the greatest possible use of the services of any competent international non-governmental organization in order to prepare the Committee's documentation and to ensure that its recommendations are implemented.

#### **Article 11**

Each Member State and Associate Member of UNESCO shall bear the expense of participation of its representatives in sessions of the Committee and of subsidiary organs, its Bureau and its ad hoc subcommittees. These Statutes were adopted by Resolution 4/7.6/S of the 20th session of the General Conference of UNESCO, Paris, 24 October to 28 November 1978.