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

Twenty-first Session
UNESCO Headquarters, Room XI
30-31 May 2018

Item 5 of the provisional agenda: Report of the Secretariat on the follow-up to the recommendations and decisions adopted during the 20th Session

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 at its Twenty-first Session on activities carried out since its Twentieth Session, held on 29-30 September 2016 and, in particular, on the follow-up to the recommendations and decisions adopted by the Committee.

Decision required: paragraph 27
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 (hereafter “the Committee”) at its Twenty-first Session, on the follow-up to the recommendations and decisions adopted by the Committee in its Twenty-first Session, held on 29 to 30 September 2016.

REPORT ON THE WORKING METHODS OF THE INTERGOVERNMENTAL COMMITTEE
(Decision 20.COM/5 (4))

2. Paragraph 4 of Decision 20.COM/5, adopted during the Twentieth Session of the Committee, requested the Secretariat, to prepare a report on the working methods of the ICPRCP and present options to increase the efficiency and role of the Committee, and to submit these proposals for discussion by the Committee at its next session.

3. The Secretariat prepared such a document under number 21.COM/6.

AMENDMENT OF THE RULES OF PROCEDURE OF THE INTERGOVERNMENTAL COMMITTEE
(Decision 20.COM/14)

4. Decision 20.COM/14 requested the Member States to submit to the Secretariat proposals for the amendment of the Rules of the Procedure of the Committee, and requested the Secretariat to submit a draft document containing proposals for the amendment of the aforementioned Rules of Procedure for possible adoption at the Twenty-first Session.

5. The Secretariat has included this item on the agenda, as requested by the above Decision, in order to present, in addition to its own proposals, those received from Member States.

6. The Secretariat has received four proposals from Member States (Ecuador, Greece, Honduras and Switzerland) and incorporated them in a document (21.COM/6) which will also present the suggestions for amendments that the Secretariat has worked on in collaboration with UNESCO’s Office of International Standards and Legal Affairs.

STRENGTHENING THE ROLE OF THE COMMITTEE AND FORUM OF DISCUSSIONS
(Decision 20.COM/5 (3))

7. The Committee had decided, at its last session, to allocate one day, during its ordinary sessions, to a forum of discussions to share good practices and promote multilateral and bilateral cooperation with a view to the restitution and return of cultural property to its countries of origin.

8. Since taking office in November 2017, the Director-General has wanted to give a broader framework to these discussions and encourage the sharing of good practices on the theme of the circulation of cultural property and shared heritage. In this context, she decided to organise a high level conference on this topic, which will take place on 1 June 2018 at UNESCO Headquarters.
MEDIATION AND CONCILIATION PROCEDURE
(Decision 20.COM/5 (5) and (7))

9. Within the framework of the strategies designed and implemented to facilitate the work of the Committee and to enhance the process of return or restitution of cultural objects, UNESCO provides an alternative means to resolve disputes linked to cultural property, through the Committee's Mediation and Conciliation procedures.

10. In March 2018, the list of mediators and conciliators designated by their country included 60 individuals from 30 different countries. Since June 2014, however, the Secretariat has not received any new appointments from countries which have not had any representatives as yet. Nevertheless, the Secretariat continues to deploy all its efforts to increase the number of mediators and conciliators and to promote the use of this mediation and conciliation procedure as an alternative means for dispute resolution.

DATABASE ON RETURN AND RESTITUTION CASES
(Decision 20.COM/5 (10) and (11))

11. The Secretariat carried out research and feasibility studies on the best way to establish a database on return and restitution cases, following which it suggests not to create a new database but to support and consolidate the already existing "ArThemis database", and to establish a strengthened partnership with the Art-Law Centre of the University of Geneva (Switzerland), which is a well-established and active UNESCO Chair in International Law of the Protection of Cultural Heritage.

12. The Secretariat signed a strengthened partnership agreement with the University of Geneva on 21 March 2018.

UPDATE ON FREE PORTS
(Decision 20.COM/12)

13. Decision 20.COM/12, relating to the eponymous document presented by the Secretariat at the Twentieth Session of the Intergovernmental Committee, requested the Secretariat to update this document to reflect the latest developments regarding Free Ports.

14. In the same vein, the Decision also called on the Secretariat to organize awareness raising activities on the implication of free ports on the art market trade and risk of illicit trafficking of cultural property, in order to fight against the illegal aspects of this increasing phenomenon.

15. The Secretariat updated its report on free ports thanks to the contribution of Prof. Marc-André Haldimann, a researcher in the field of cultural heritage protection, and will present it to the Committee as part of the information document “Contemporary challenges of the illicit trafficking of cultural property” (21.COM/INF.4).

INFORMATION CASES

16. The Secretariat encourages Member States to present the cases in progress that concern them. In March 2018, the Secretariat received two requests concerning the presentation of information cases:
Turkey – United States of America: the Permanent Delegation of the Republic of Turkey to UNESCO submitted to the Director-General, in a letter dated 27 October 2017, an official request to present an information case regarding a set of 12 mosaics that are currently held by Bowling Green State University in the United States. These objects were allegedly looted and then illegally exported from the site of Zeugma in Turkey in the 1960s. The Turkish authorities and representatives of Bowling Green State University have met several times to discuss the return of these items, without coming to a mutually acceptable agreement. This case will therefore be presented as an information case.

Hungary – Russian Federation: in a letter addressed to the Secretary of the Committee, dated 7 March 2018, the Hungarian authorities requested the inclusion on the Committee's agenda of an information case concerning more than 8,000 Hungarian items that were allegedly taken by soldiers in the Soviet armed forces during World War II and are currently believed to be held by the Russian Federation. The Hungarian authorities hope to reopen bilateral negotiations with the Russian authorities. This case will therefore be presented as an information case.

CASES OF RETURN AND RESTITUTION
(Decision 20.COM/5 (8))

17. The recent cases mentioned below are cases which were reported to the Secretariat by the States concerned. In spite of Recommendation 20.COM/5 (8) which “encourages Member States to conduct bilateral negotiations on the return and restitution of cultural property and submit to the Secretariat information on ongoing bilateral negotiations as well as on the successful conclusion of such cases”, the Secretariat notes that there has been no increase in the number of cases received. Therefore, the Committee may wish to further encourage Member States to periodically share information on return and restitution cases with the Secretariat.

- **Venezuela – Costa Rica, January 2018**: the National Museum of Costa Rica (MCNR) displays 196 pre-Columbian archaeological items returned after they were seized in Venezuela, between 2010 and 2014, and repatriated by sea to the country.
- **United States – Lebanon, December 2017**: following an investigation by U.S. Immigration and Customs Enforcement’s (ICE) Homeland Security Investigations (HSI) New York’s Cultural Property, Arts and Antiquities (CPAA) group, in coordination with the Manhattan District Attorney’s Office (DANY), three marble statues originally excavated from the Temple of Eshmun in Lebanon were repatriated to their home country. The Consul General of Lebanon in New York accepted the return of the artefacts on behalf of Lebanon.
- **Guatemala – Germany/Italy/Switzerland, November 2017**: Guatemala successfully repatriated 18 pre-Columbian archaeological items that had been illegally exported from the country in the 1960s and were located in Germany, Italy and Switzerland.
- **United States – Italy, October 2017**: Manhattan District Attorney Cyrus R. Vance, Jr., announced the return of a collection of ancient artefacts to the Italian Republic during a repatriation ceremony which took place on 20 October 2017.
• **France – Egypt, October 2017**: on 26 October 2017, France returned to Egypt eight archaeological items seized by French customs in January 2010.

• **Republic of Korea – Mongolia, April 2017**: the Republic of Korea returned 11 dinosaur fossils smuggled into the country from Mongolia. The fossils include those of Tarbosaurus Bataar, a large carnivorous dinosaur whose remains are found only in Mongolia. The Supreme Prosecutors’ Office held a ceremony on 7 April to return the fossils, which were illegally brought into the country in 2014.

**BROKEN HILL MAN SKULL**

18. In 2016, Zambia sent a letter to the Director-General of UNESCO requesting the inclusion of the case of the Broken Hill Man Skull, which is currently located in the United Kingdom of Great Britain and Northern Ireland, to the agenda of the Twentieth Session of the Committee. The Broken Hill Man Skull belongs to an early or archaic Homo sapiens and dates back to 600,000-400,000 years ago. It is a complete cranium with outstanding features. It was discovered in 1921 during a mining operation in Kabwe when Zambia was under British rule. The skull was taken to the United Kingdom to be studied and was then donated to the Natural History Museum in London when it was still a part of the British Museum.

19. According to Article 3.2 of the Committee’s Rules of Procedure, “offers and requests for the return or restitution of cultural property whose inclusion on the agenda has been requested by a Member State or Associate Member of UNESCO, provided that they have been received by the Director-General of UNESCO at least six months before the opening of the session”. As the Broken Hill Man Skull case was not presented six months before the opening of the Twentieth Session in 2016, it could not be included on the agenda.

20. Once a formal request has been received within the prescribed period, the case is formally presented to the Twenty-first Session in accordance with the provisions of the Standard Form concerning Requests for Return or Restitution “the requesting country should use the form to submit its request to the Secretariat of the Committee which will transmit the document to the holding country concerned. The holding country should in turn use the form to provide its reply to the request and return it to the Secretariat of the Committee within a period of one year from the date of receipt.”

21. By letter dated 22 January 2017 and addressed to His Excellency the UK Ambassador to UNESCO, the Assistant Director-General for Culture reminded the UK authorities to respond to Zambia’s request and to complete the Standard Form. The aim was to facilitate the review of the case by the Intergovernmental Committee at its Twenty-first Session, but the Secretariat has not received any response from the UK authorities as of the date of preparation of the report. However, discussions took place in March 2018 between the Permanent Delegation of the United Kingdom to UNESCO and the Secretariat on this matter, with the aim of making contact with the Delegation, explaining the Committee’s operating procedures to them and encouraging them to complete and submit the Standard Form.
PARTHENON SCULPTURES
(Decision 20.COM/5 (6) and Recommendation on the Parthenon Sculptures)

22. The case of Parthenon Sculptures was submitted to the Committee in 1984. Since then, the Committee has been examining it during its successive sessions and has adopted several recommendations expressing concern for a mutually acceptable solution to be reached and inviting the Director-General to facilitate encounters to that effect. On many occasions, UNESCO reiterated its readiness to act as facilitator between Greece and the United Kingdom in this regard.

23. The recommendation adopted at the Twentieth Session of the Committee, which was fully dedicated to the question of the Parthenon Sculptures, called on Greece and the United Kingdom to intensify their efforts and invited the Director-General to assist with the convening of the necessary meetings between the two Member States, in order to achieve a satisfactory settlement and a mutually acceptable solution concerning this case, which was first presented before the Committee more than three decades ago.

FUND AND RESOURCES
(Decision 20.COM/5 (9))

24. The Secretariat of the Committee also provides the Secretariat of the 1970 Convention, which is, since January 2016, part of the new Section for Movable Heritage and Museums (MHM). The Secretariat of the Committee currently comprises five permanent staff members – the Chief of Section, a Programme Specialist, an Associate Programme Specialist (recruited in August 2016), a young professional (arrived in June 2016) and a Secretarial Assistant, who are supported by four temporary staff.

25. With reference to the Fund of the Committee, as of 19 March 2018, the balance available amounts to USD 320,859.

26. The Committee may wish to adopt the following Decision:

DRAFT DECISION 21.COM 5

The Committee,

1. Having examined document ICPRCP/18/21.COM/5/REV,

2. Taking note of the Report of the Secretariat on the follow-up of the recommendations and decisions adopted during the 20th Session in 2016;

3. Recalling its Decisions 19.COM/4 (7) and 20.COM/5 (3) concerning strengthening the role of the Committee and organising a forum of discussions;

4. Also taking note of the Director-General’s decision to hold a high level meeting on 1 June 2018 at UNESCO Headquarters on displaced cultural property and shared heritages;

5. Recalling its Decision 20.COM/5 (5) and (7) concerning the list of mediators and conciliators;

6. Also recalling its Decision 20.COM/5 (10) and (11) concerning the establishment of a partnership with the University of Geneva concerning the
consolidation of the ArThemis database, whose operational implementation is requested of the Member States by the second half of 2018;

7. **Invites** the Member States to make more extensive use of the mediation and conciliation procedure in order to facilitate the resolution of cases of return and restitution of cultural property under discussion before the Committee and **encourages** the Member States to designate experts and submit their *curriculum vitae* to the Secretariat;

8. **Strongly encourages** Member States to conduct bilateral negotiations on the return and restitution of cultural property and submit to the Secretariat information on ongoing bilateral negotiations as well as on the successful conclusion of such cases;

9. **Also invites** Member States and Observers to provide human and financial resources to the Secretariat to ensure the sustainability of the Committee’s work.