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

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Provisional agenda item 5: Report of the Secretariat on the follow-up to the recommendations and decisions adopted during the 19th 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 (hereafter “the Committee”) at its Twentieth Session on activities carried out since its Nineteenth Session, held on 1-2 October 2014 and, in particular, on the follow-up to the recommendations and decisions adopted by the Committee.

Decision required: paragraph 42.
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 Twentieth Session, on the follow-up to the recommendations and decisions adopted by the Committee in its Nineteenth Session, held on 1 to 2 October 2014.

PROMOTION OF BILATERAL NEGOTIATIONS ON RETURN AND RESTITUTION
(Recommendation 19.COM 3 (4) and (7))
2. In accordance with Article 4.2 of the Statutes of the Committee providing that the Committee shall be responsible for ‘promoting multilateral and bilateral cooperation with a view to the restitution and return of cultural property to its countries of origin’, the Secretariat informs the Committee that it received in June 2016 a request from the Norwegian Ministry of Culture to facilitate bilateral procedures concerning the return of a Buddha statue which was confiscated by Norwegian custom authorities, while being illegally imported in the country in 2011. Due to the lack of provenance information, the Norwegian authorities consulted renowned art-historians to identify the origin of the statue. The experts confirmed that the statue, given its artistic and scientific technical features, originated from Myanmar. The Secretariat transmitted this information to the Delegation of Myanmar to UNESCO in order to seek their position on this matter. Currently, the artefact is conserved in the Museum of Cultural History in Oslo.

3. The Secretariat promotes informal mediations, and good practices with a view to promoting and facilitating bilateral negotiations on return and restitution of cultural property. In addition, the Secretariat, whenever possible, monitors on-line sales of cultural property. As a result, in June 2016, the Egyptian Embassy in France received back from Milion, a French auction house, an ancient artefact illegally exported from the source country. Egypt’s foreign ministry clarified that the artefact was received following several official memoranda directed to the auction house.

MEDIATION AND CONCILIATION PROCEDURE
(Recommendation 19.COM 6)
4. 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.

5. In July 2016, 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.

6. Moreover, States are regularly reminded about the existence of this mechanism and are also encouraged to designate appropriate experts. All workshops and capacity-building trainings promote this mechanism and seek to familiarize heritage managers and law enforcement agencies with the utility of this alternative means of dispute resolving. Additionally, this soft law tool is being promoted by academic circles, such as at the Court of Conciliation and

DATABASE ON RETURN AND RESTITUTION CASES
(Decision 19.COM 4 (5 (c)))

7. 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", establishing a strengthened partnership with the Art-Law Centre of the University of Geneva2, which is a well-established and active UNESCO Chair in International Law of the Protection of Cultural Heritage.

8. Indeed, a new database would require a large amount of financial and human resources and a satisfactory result could be reached only after long term developments. On the contrary, a partnership with an already well-developed database provider would allow to achieve the same result without entailing significant additional costs and duplication of work.

9. ArThemis is a fully searchable database containing case notes on disputes over cultural property as well as other pertinent documents, judicial decisions, published agreements and pictures. It also includes cases that are settled through alternative dispute resolution methods (ADR). This database aims to demonstrate the potential of alternative dispute resolution methods for the settlement of art-related cases as well as to provide the stakeholders of the art and cultural heritage sphere – including lawyers, mediators, arbitrators, practitioners, researchers and potential litigants – with telling examples that might act as a guiding tool in the settlement of restitution cases.

10. The ArThemis database ultimately endeavors to emphasize that restitution cases should be preferably settled through processes that allow stakeholders to take account of the uniqueness of cultural property and to reconcile the competing moral, historical, cultural, financial and legal issues at stake3. Consequently, in order to ensure a proper use of limited financial and human resources, the Committee may wish to review its Decision 19.COM 4 (5 (c)), inviting the Secretariat to establish a partnership with the University of Geneva in order to support and consolidate the ArThemis database.

METHODOLOGY CONCERNING CULTURE HERITAGE PROFFESIONALS TRAINING
(Decision 19.COM 4 (5 (e)))

11. The Secretariat of the Committee – which is also the Secretariat of the 1970 Convention - organized several capacity-building trainings for different stakeholders, including cultural heritage professionals. These workshops were implemented in the framework of the new capacity-building strategy aiming at advocating and effectively implementing the 1970 Convention and further promoting the role of the Committee.

12. The approach followed is partly based on needs assessments used to identify priority areas, mechanisms and main target beneficiaries. Information provided in the States Parties' National Reports of the 1970 Convention also featured prominently in the elaboration of the strategy. Moreover, in early July 2015, the Secretariat sent a questionnaire to UNESCO field offices to determine what areas needed to be addressed in order of priority in terms of capacity-building and awareness-raising initiatives related to the fight against the illicit trafficking of cultural property.

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1 Proceedings to be published in a book entitled "Conciliation is International Law".
2 http://plone.unige.ch/art-adr
3 The ArThemis database will be presented on 30 September 2016 during the Twentieth Session of the Committee.
trafficking in cultural property and the promotion of its restitution. The outcomes of the questionnaires’ analysis carried out by the Secretariat were summarized in Document C70/15/3.SC/7 presented during the Third Session of the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention. The questionnaire related to several areas: (i) the modalities and mechanisms, (ii) topics to be tackled, (iii) beneficiaries of the activities, (iv) mechanisms to enhance follow-up in the framework of the capacity-building and awareness-raising activities and (v) comprehensive approach to awareness-raising. Regarding topics to be tackled, items linked to return and restitution procedures appear to be among the top priorities for field offices.

13. Based on the above, the Secretariat proposes to structure the methodology dedicated to the training of cultural heritage professionals in the following way:
   a) a module focused on preventive measures to fight against illicit trafficking in cultural property;
   b) a second module dedicated to advocacy and the promotion of international cooperation; and
   c) a third module on return and restitution.

The latter requires in-depth training for cultural heritage professionals due to the very specific nature of each case. In this regard, a database on return and restitution cases will be a helpful tool.

14. Among other tools designed to better prevent the illicit trafficking in cultural heritage, the Secretariat encourages national authorities to use, where applicable, “the International Code of Ethics for Dealers in Cultural Property”, the “Model Export Certificate for Cultural Objects” and “the UNESCO-UNIDROIT Model Provisions on State ownership of Undiscovered cultural property”, as well as the “Basic Actions concerning Cultural Objects being offered for sale over the Internet”.

DEVELOPMENT AND PROMOTION OF COMMUNICATION AND PRACTICAL TOOLS
(Decision 19.COM 4 (5 (a)(e)))

15. In Decision 19.COM 4 (5 (e)), the Secretariat was requested to prepare an analysis on the development of communication tools, especially those related to the real nature, scale and scope of the question of the return and restitution of cultural property.

16. In the spirit of that Decision, the Secretariat signed an agreement with the Prussian Cultural Heritage Foundation (SPK) in May 2015. In this framework, it has started an awareness raising campaign with the National Museums in Berlin, including the Pergamon Museum, concerning the fight against the illicit trade of artefacts from Iraq and Syria and promoting their return when the situation allows. The campaign focuses on the dissemination of awareness-raising materials for the general public.

17. In November 2015, the travel guide book “Lonely Planet France”, published on their website a text warning tourists on the risks of illicit trafficking in cultural property and the need to return them. An article will soon be included in the hardcopy versions of the travel guides of countries where movable cultural property is particularly at risk.

18. Several video-clips on the fight against illicit trafficking in cultural property and its restitution, with the message “Heritage is identity, don’t steal it”, have been disseminated in airports and travel hubs around the world through XL screens, as well as on social networks of UNESCO Headquarters and Field Offices, Permanent Delegations and National Commissions, as well as by UNESCO’s partner institutions and individuals.

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4 http://www.preussischer-kulturbesitz.de/en.html
19. A regional awareness-raising campaign, financed by the Spanish Agency for International Development Co-operation (AECID), was carried out in Algeria, Morocco, Mauritania and Tunisia. In addition to producing communication tools (posters, postcards and stickers), an awareness-raising video was produced for local communities, dedicated to combatting trafficking in the North Africa region. A comics on heritage protection for children was also published and adapted to each of the four countries involved.

20. A national awareness-raising campaign is carried out, in the framework of the UNESCO/Monaco Funds-In-Trust Cooperation project “Strengthening Mongolian Capacities for the Fight Against the Illicit Trafficking of Cultural Objects in Mongolia”, is carried out in Mongolia. A media campaign has been developed, involving the production and dissemination of video clips and awareness-raising materials on the importance of protecting Mongolia’s cultural heritage for the general public, tourists/visitors, young people and culture workers. The issue of return and restitution is specifically addressed in this awareness-raising campaign.

21. Within the framework of the ‘#Unite4Heritage’ international campaign, the Secretariat supported several initiatives:

- Production and dissemination of communication materials about the importance of safeguarding Iraqi cultural heritage and the promotion of its restitution, including a video highlighting the country’s cultural diversity and heritage posted on YouTube\(^6\), thanks to the generous contribution of the Norwegian government;

- Organization of the exhibition ‘Palmira en Villa Ocampo’, the opening of which took place on 27 April 2016 in Villa Ocampo, Argentina, to raise awareness in Latin America on the return and restitution of cultural property and the need to safeguard cultural heritage in times of conflict, using the emblematic example of Palmyra \(^7\);

- Patronage of and participation in two concerts performed in Paris (8 and 16 June 2016) by the Cheeur Philharmonique international and dissemination of communication materials\(^8\);

- Organization of a “#Unite4Heritage workshop” on 17 May 2016 in Samarkand, Uzbekistan, to raise the awareness among museum professionals from Uzbekistan. The workshop also aimed at discussing possible joint activities between UNESCO and Uzbek museums in the framework of the campaign, with a special focus on the fight against the illicit trafficking in cultural property and the promotion of its restitution.

22. Finally, the Secretariat promotes on every occasion, including during missions, the importance of Sustainable Development Goal 16 and its Target 16.4, which addresses the recovery and return of stolen assets.

23. The Secretariat maintains and regularly updates a dedicated web page\(^9\) which contains all relevant information and tools related to the return and restitution of cultural property and the “UNESCO Database of National Cultural Heritage Laws”\(^10\). The Secretariat encourages Member States to familiarize themselves with this webpage and to use it as a forum for sharing and managing information, which have proved to be successful, as reflected by the increasing number of alerts of stolen objects\(^11\) and cases of return/restitution\(^12\) published on

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\(^6\) http://www.youtube.com/watch?v=eGZ241XBDY


\(^8\) http://www.lechoeurcpi.fr/actualites/le-requiem-de-dvorak/


\(^10\) http://www.unesco.org/culture/natlaws/

it. From October 2014 to July 2016, the website recorded over 300,000 visits. A majority of visitors searched for general information on the Convention, States Parties and statutory meetings followed closely by web pages relating to emergency actions, legal and practical instruments, UNESCO’s Database on National Cultural Heritage Laws and cases of return and restitution.

24. From October 2014 to July 2016, the UNESCO Database of National Cultural Heritage Laws has been updated with 165 new national cultural laws from 42 different countries. As of July 2016, the database comprises 2,829 national cultural laws from 188 countries.

NEW REQUESTS FOR SUBMISSION OF A CASE TO THE COMMITTEE
(Recommendation 19.COM 5)

25. On 29 March 2016, Zambia sent a letter to the Director–General of UNESCO requesting the inclusion of the Broken Hillman Skull case, 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 request was sent by Zambia six months before the opening of the Session in line with Article 3.2 (e) of the Rules of procedure of the Committee, in order to ensure the submission of the case before the Committee. The Broke Hillman 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 British Museum.

26. The Secretariat transmitted the request to the United Kingdom authorities. The holding country has one year to reply to the request, for it to be considered formally by the Committee.

CASES OF RETURN AND RESTITUTION
(Recommendation 19.COM 3 (7))

27. The recent cases mentioned below are cases which were reported to the Secretariat by both of the two concerned States. In spite of Recommendation 19. COM 3 (7) which ‘invites Member States to submit information to the Secretariat on ongoing bilateral negotiations in respect of return and restitution of cultural property as well as 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 share periodically information on return and restitution cases with the Secretariat.

- Germany - Iraq, 2016: Germany returned to the Republic of Iraq a Sumerian clay cuneiform tablet in 2016, dating back to 2049 B.C. The tablet was offered in an online

13 Data update to June 2016.
auction, in violation of the ban on trade with Iraqi cultural property in the EU\textsuperscript{14}, and seized by a criminal police office in the State of Schleswig-Holstein;

- **Germany - Iraq, 2015**: The President of the Prussian Cultural Heritage Foundation handed over a 2,600 years old clay brick, with an inscription of the Babylonian King Nebukadnezar, to the Iraqi Embassy in Berlin. This object had been illegally removed from Iraq in 1975 by an individual, who had recently donated it to the Foundation;

- **Switzerland - Egypt, 2015**: The Swiss Federal Office of Culture returned to the Egyptian Embassy in Bern, with the presence of the Secretariat 32 ancient cultural objects, dating from the Pharaonic and Roman periods. Four of the returned items are extremely rare and of remarkable aesthetic quality (approx. 1500-1000 B.C.) and items represent two architectural fragments dating back to the Roman period (approx. 753 B.C. to 476 A.D.);

- **United States of America – Cambodia, 2015**: During the Third Meeting of States Parties to the 1970 Convention in 2015, the latest restitution to Cambodia of a Khmer statue was celebrated. This is the sixth restitution returned to Cambodia in the recent years, out of the nine Khmer Statues of great cultural heritage significance, looted from Prasat Chen, Koh Ker, and located abroad.

- **Germany - Peru, 2015**: During the visit of the German President to Peru an ancient ritual knife ("Tumi") was handed over to the Government of Peru. The knife is around 800 years old. It had probably been excavated illegally in the Lambayeque region. German authorities seized it in Berlin in 2013, where it had been offered for sale by an auction house;

- **Germany - Italy, 2015**: On 22 January, the Römisch-Germanisches Zentralmuseum in Mainz (RGZM) handed over to Italy a collection of grave goods, dating back to the 5th millennium BC. The seven artefacts were looted from a tomb near Laterza in Puglia, acquired by the RGZM on the art market in 1986 and now returned to the Soprintendenza per i Beni Archeologici della Puglia, which already has plans for its exhibition.

### PARTHENON SCULPTURES

*(Recommendation 19.COM 8)*

28. 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.

29. Pursuant to Recommendation No. 5 adopted at the eighteenth session of the Committee (Paris, 22 June 2012), the Director-General assisted 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. On 23 July 2013, the Director-General met the Minister of Culture of the Hellenic Republic. During their discussion the Minister expressed his hopes 'that UNESCO could use its good offices with the authorities of the United Kingdom as a facilitator in the matter of the Parthenon sculptures. In that regard, he referred to the mediation and conciliation roles UNESCO played in 2010 in the context of this Committee'.

30. Following this meeting, the Assistant Director-General for Culture sent a letter to the United Kingdom authorities, informing them of the will of the Greek authorities to possibly resort to the mediation/conciliation procedure.

31. During the 19th Session, the Committee acknowledged the cooperation between Greek and British authorities, encouraged them to continue the discussions and invited them to consider making use of the mediation and conciliation procedure.

32. According to Article 6 (1) of the Rules of Procedure for Mediation and Conciliation, in order to launch this process, mutual consent of countries concerned is required for the process to be launched. However, on 26 March 2015, United Kingdom informed UNESCO that they did not believe the application of the mediation procedure would substantially carry forward this debate.

FUND AND RESOURCES

(Recommendations 19.COM 3 (5) and (6) and 19 COM 7 (2) and (3))

33. The Secretariat of the Committee also provide 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 four permanent staff members—the Chief of Section, a Programme Specialist, an Associate Programme Specialist (recruited in August 2016), a Young Professional from Oman (arrived in June 2016) and a Secretariat Assistant, who are supported by four temporary staff. In addition, from mid-July 2015 to end of December 2015, the Secretariat benefited from the secondment, as a consultant, a Senior Programme Officer from UNIDROIT. Member States are encouraged to reinforce the Secretariat with human and financial resources in order to allow the implementation of the tasks assigned. In this context, regarding recommendation No. 3 (5), the Secretariat is pleased to inform the Committee Members as well as the Observers that Turkey seconded an expert to the Secretariat from July 2014 until July 2015.

34. With reference to the Fund of the Committee, as of 12 August 2015, the balance available amounts to USD 124,202. Despite its efforts, the Secretariat did not receive voluntary contribution nor did it receive new request for its use. However, as described in paragraph 10, the Committee may wish to allocate resources of the fund for establishing a partnership with the University of Geneva in order to support and consolidate the ArThemis database.

PROPOSAL FOR REVIEWING AND STRENGTHENING THE COMMITTEE’S ROLE

(Decision 19 COM 4 (7))

35. Following Decision 19 COM 4(7), the Secretariat presents to the Committee its proposals for a possible review and strengthening of the Committee’s role. The Statutes of the Committee state that: “[I]t is responsible for seeking ways and means of facilitating bilateral negotiations and promoting multilateral and bilateral cooperation for the return or the restitution of cultural property”15. Its main objective is therefore to act as an advisory body which aims at facilitating bilateral negotiations in claims for restitution of significant pieces of cultural heritage, with a view to finding alternative means for dispute resolution.

36. The Committee is also entrusted with a responsibility to disseminate good practices related to the return or restitution of cultural objects to their country of origin. There are multiple ways to solve international disputes regarding cultural property. Besides, the return or the restitution of cultural property offers many advantages. Therefore, it is necessary to inform the Members of the Committee and its observers of existing good practices on a regular basis.

37. Looking at the Committee’s functions, its main responsibility is to facilitate return and restitution of cultural objects which fall out of the scope of the 1970 UNESCO Convention. Currently the Committee has only one pending case (the Parthenon Sculptures) and an

15 Statutes of the ICPRCP, Article 4 paragraphs 1 and 2.
additional one is being presented. Considering that only cases which could not have been solved via bilateral negotiations can be submitted to the Committee, the number of cases before it should not be considered as a criterion to measure its effectiveness. By the same token, it must be acknowledged with satisfaction that more and more frequently, States are negotiating cases of return and restitution bilaterally. Consequently, the Committee is less solicited on this issue. This does not mean that the Committee should stop assuming this role. The Committee should be ready to support any case brought before it, when the bilateral negotiations fail, by conferring more authority and assurance through its decisions and by shortening the process for restitution.

38. Moreover, Member States, in accordance with Article 2(5) of the Statutes, may wish to consider inviting representatives among academics and/or experts on matters related to the return and restitution of cultural objects to the sessions of the Committee which can lead to improving the discussions substantially.

39. It may also allow the Committee to further develop other actions as provided in Article 4 of the Statutes and, in particular, sub-paragraphs 2 and 3 such as promoting multilateral and bilateral cooperation with a view to the restitution and return of cultural property to its countries of origin and 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.

40. In the light of above, the Committee, acting as think-tank on return and restitution, may consider allocating one day during its ordinary sessions to a forum of discussion in which academics and experts could participate, in order to share their knowledge, prospective, good practices and experience on return and restitution issues. Studies and papers could be published by the Committee at the end of each session.

41. Furthermore, considering the recent adoption, in 2015, of the Recommendation of the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society16, the Committee may wish to take this opportunity to further develop its responsibilities under paragraphs 6 of article 4, notably regarding the reinforcement of museums for the conservation of cultural property (in particular through the development of inventories) and the training of the necessary scientific and technical personnel and explore possible synergies with the Recommendation. Indeed, the preservation of collections is one of the main functions of museums in society, as stated in the Museum Recommendation.

42. The Committee may wish to adopt the following recommendation:

**DRAFT RECOMMENDATION 20.COM 5**

_The Committee,_

1. Having considered document ICPRCP/16/20.COM/5,

2. Takes note with appreciation of the Report of the Secretariat on the follow-up of the recommendations and decisions adopted during the 19th Session in 2014;

3. Recalls its Decision 19.COM 4 (7) concerning strengthening the role of the Committee and decides to allocate one day, during its ordinary Sessions, to a forum of discussions to ensure exchange of good practices and promotion of multilateral

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and bilateral cooperation with a view to the restitution and return of cultural property to its countries of origin;

4. **Recalls** its Recommendation 19.COM 6 (2) concerning list of mediators and conciliators and encourages Members States to designate experts and to submit their *curriculum vitae* to the Secretariat;

5. **Invites** Member States to consider Mediation and Conciliation procedures for their claims in matter of Return and Restitution of cultural property;

6. **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;

7. **Invites** Member States and Observers to provide human and financial resources to Secretariat to ensure the sustainability of the Committee’s work;

8. **Revisits** its Recommendation 19.COM 4 (5 (c)) and instead of creating of a new database, invites the Secretariat to start a partnership with the University of Geneva in order to consolidate ArThemis database on return and restitution cases, and authorizes the use of the Fund of the Committee to support the development of the ArThemis database;

9. **Reminds** Member States that keeping this database comprehensive and up to date could be only achieved by the information to be provided by Member States;

10. **Further encourages** States to submit to the Secretariat contact information on experts and academics in their country specialized in return and restitution of cultural property.