

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**

**Twelfth Session
UNESCO Headquarters, Paris
25-28 March 2003**

SECRETARIAT REPORT

I. PROMOTION OF BILATERAL NEGOTIATIONS

Cases Pending before the Committee

The Parthenon Marbles

1. Pursuant to Recommendation No. 1 adopted at the eleventh session of the Committee, the Director-General renewed efforts to hold a meeting between Greece and the United Kingdom using a pre-specified and agreed-upon agenda. The Secretariat attempted to schedule a meeting in early 2002. Regrettably, it did not take place at that time mainly because 1) although this is a Government matter, the UK preferred to wait for the new Chairperson of the Board of Trustees of the British Museum, and the new Director of the Museum to take up their posts in June and August 2002 respectively; and 2) Greece wanted to include return of all the Marbles in the proposed agenda items for the meeting and the UK was not in agreement with this proposition.

2. Outside the Secretariat's efforts and the Committee's framework, on 12 November 2002 the Greek Minister of Culture, while in London, had separate meetings with the British Secretary of State for Culture Media and Sport, and with the new Director and Chairperson of the Board of Trustees of the British Museum. Officials of the British Museum are continuing a dialogue with representatives of the Greek Government on items that may be loaned from the Museum to Greece during the Olympic Games.

3. Shortly before this session of the Committee the Secretariat again attempted to organize a meeting between the two sides with a pre-specified, agreed-upon agenda. The British Government did not consider it necessary to assist in the meeting proposed and indicated that it will provide a report on this issue to the next session of the Committee.

The Boğazköy Sphinx

4. In 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 it.
5. On 19 November 2002 a bilateral meeting was held between Turkish and German authorities in Berlin with little result. Germany proposed keeping the original Sphinx and having a replica made to give to Turkey. Turkey proposed the return of the Sphinx to Turkey and giving a replica to Germany. Neither proposal was accepted.
6. On 3 February 2003 the Assistant Director-General of Culture for UNESCO met with the Turkish and German Permanent Delegates. Though bilateral negotiations continue, no definitive result has been achieved.

Selective Overview on Developments outside the Committee

7. The Secretariat has continued to encourage Ethiopia and Italy to maintain the recent momentum in their bilateral negotiations with a view to returning the Axum Obelisk to Ethiopia. On 19 July 2002 the Italian Council of Ministers took a concrete decision to start the technical and administrative procedures necessary to return the obelisk to Ethiopia. Experts from the two sides met officially on 2 September 2002 to discuss the technical modalities of restoring, dismantling and transporting the obelisk.
8. The Republic of Korea is working with France to resolve the matter of the Oe-Kyujanggak Archives that were taken by the French Navy from Korea in 1866. The archives are currently located in the French Bibliothèque Nationale. The Korean Ministry of Foreign Affairs sent an official request for the return of the archives to the French Ministry of Foreign Affairs in December 1991. Since then a series of diplomatic negotiations and consultations with experts have taken place and in 1993 and 2000 the Heads of State of France and the Republic of Korea expressed their willingness to resolve the matter, but little progress has been made since 2001. The National Commission of the Republic of Korea for UNESCO held an international experts meeting in October 2002 and this issue was included in the discussions and resulting recommendations.
9. Three illicitly trafficked Nok and Sokoto artifacts originating in Nigeria were purchased by France, to be placed in the future Quai Branly Museum per an agreement reached between French President Chirac and Nigerian President Obasanjo authorizing the purchase of the sculptures from a Belgian dealer. Nok sculptures are on the ICOM Red List of objects, they are “banned from export [and] may under no circumstances be put on sale”. In January 2002, France and Nigeria reached an agreement that recognized Nigeria’s ownership of the sculptures in question and in exchange Nigeria generously agreed to permit the objects to remain in the permanent collection of the Quai Branly Museum for a (renewable) period of 25 years.
10. In the Summer of 2001, the sculpted stone head of “Medossa”, stolen from the World Heritage site of Hatra in Iraq, and a stone Assyrian relief, were located in a

London dealer's shop and were seized by Scotland Yard on information received from INTERPOL Headquarters. The UNESCO Secretariat assisted in confirming the authenticity of the objects and having them returned to Iraq via Jordan following permission granted by the United Nations Sanctions Committee and the issuance of an export permit from the UK Ministry of Culture, Youth and Sport. The objects were returned to Iraq in Spring 2002.

11. A criminal trial in New York Federal Court resulted in the ground-breaking conviction in February 2002 of Frederick Schultz, a leading American antiquities dealer, for dishonestly receiving stolen Egyptian antiquities from an English dealer. On 11 June 2002 Mr Schultz, former President of the National Association of Dealers in Ancient, Oriental and Primitive Art, was sentenced to 33 months in prison and a fine of \$50,000 was imposed, along with the requirement to return an ancient Old Kingdom relief to Egypt as restitution. The decision was based in part on recognition by the US Court of Egyptian law establishing clear ownership by Egypt of the objects. Mr Shultz has filed an Appeal, which will be considered by the Court in March 2003.

12. On 16 December 2002, Buddhist Master Sheng Yen, on his own initiative, officially returned to Chinese authorities an ancient stone Buddha head that was stolen from China in 1997 and then purchased by a Chinese businessman from Taiwan, who donated it to a religious institute in Taiwan. The head will be returned to its original setting - the Jinan pagoda, built in 611 in Shangdong Province.

13. On 11 December 2002 the Directors of 18 important museums located in the US, Germany, France, Italy, the Netherlands, Spain and Russia issued a "Declaration on the importance and value of universal museums". The Declaration states in part that "[c]alls to repatriate objects that have belonged to museum collections for many years have become an important issue for museums. Although each case has to be judged individually, we should acknowledge that museums serve not just the citizens of one nation but the people of every nation." ICOM issued a statement in response to the Declaration, noting in part that "[r]epatriation of objects is an issue that should be very carefully dealt with. Wise and thoughtful judgement is necessary. Unnecessarily strong judgements or declarations should in any case be avoided."

II. 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")

14. During the thirtieth session of the UNESCO General Conference (1999), the Report of this Committee was presented in which there was a Recommendation inviting the Director-General to establish the Fund. This was adopted by the General Conference through Resolution 30 C/27, which

"5. *Invites* the Director-General to establish a fund within UNESCO...

(a) financed by voluntary contributions and administered on the model of the fund for the International Programme for Development of

Communication (IPDC), a special account being established for this purpose in accordance with the Committee's sixth recommendation;
(b) designed to finance specific projects submitted to the Committee."

15. In a letter dated 19 December 2001, Mr Evangelos Venizelos, Minister of Culture of Greece, kindly informed the Director-General that Greece would provide 10,000,000 drachmas to the Fund, to serve "the excellent cause of preserving Afghani antiquities, which have illicitly left the country..." On 29 May 2002, the Permanent Delegation of Greece to UNESCO issued a cheque in the amount of 29,342 euros. UNESCO's Bureau of the Budget has created a code for the Fund, permitting the cheque to be deposited in a "Special Account".

16. General Guidelines for application to and use of the Fund are to be discussed and established by the Committee.

17. An information kit promoting the Committee, restitution issues and the Fund is being elaborated by the Secretariat and will be available shortly.

III. INTERNATIONAL COOPERATION

New States Parties to the UNESCO 1970 and UNIDROIT 1995 Conventions

18. Since the last session of the Committee (March 2001), six States have joined the 1970 UNESCO Convention (Albania, Barbados, Bhutan, Japan, Rwanda, and the United Kingdom) bringing the total number of States Parties to 97. Denmark, Morocco, and Sweden have announced that they are ratifying this Convention as well and Switzerland is giving it very serious consideration. The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (adopted in Rome on 24 June 1995) has five new States (Argentina, Cambodia, Portugal, Norway and Spain), bringing the total number of States Parties to 18.

Cultural Property Displaced during the Second World War

19. From 4-6 December 2002 at UNESCO Headquarters in Paris, the second Expert Meeting on the Settlement of Disputes concerning Cultural Heritage Displaced during the Second World War took place. This followed Recommendation No. 7 of the tenth session of the Committee (1999) which invited the Director-General "to convene a working group of experts in this field, with the task of preparing a more comprehensive report for the next session of the Committee", as adopted in the original English version. The first such meeting took place in Paris from 29-31 May 2000.

20. For the second meeting, ten legal experts of different nationalities participated and there were several observers. The meeting resulted in the elaboration of "Principles Relating to Cultural Objects Displaced in Relation to the Second World War." The Principles, together with the Report of the meeting, will be presented to the Committee for its endorsement or adoption.

Secretariat Assistance with Legislation, Combating Illicit Trafficking and Facilitating the Return or Restitution of Cultural Property

21. The Secretariat either co-organized or participated in the following meetings:

2001

Tajikistan, 15-17 May 2001

Tajikistan National Commission for UNESCO

“Regional Workshop on Cultural Legislation for Central Asian Countries”

Egypt, 12-14 June 2001

UNESCO-ALECSO-ISESCO

“International Meeting on Plundered Islamic Cultural Property”

Italy, 24-28 June 2002

Comando Carabinieri Tutela Patrimonio

“Protection of Cultural Property”

Armenia, 17-18 September 2001

National Commission of Armenia for UNESCO

“Interregional Conference on Co-ordination of Implementation of UNESCO Conventions and other International Instruments on Protection of Cultural Heritage”

Azerbaijan, 19-21 September 2001

National Commission of Azerbaijan for UNESCO

“National Workshop on UNESCO Legislative Acts for Protection of Cultural Heritage”

China 23-26 October 2001

Chinese Ministry of Culture

“Seminar on Fighting Against Illicit Traffic and Smuggling of Cultural Property”

Lithuania, 3-5 December 2001

Lithuanian Ministry of Culture

“Sub-Regional Conference on Cooperation in Implementing Requirements of the UNESCO 1970 Convention”

2002

Belgium, 1 February 2002

World Customs Organization Enforcement Committee Meeting

Lebanon, 11-14 February 2002

UNESCO Beirut Office

“Arab Regional Workshop on the Illicit Traffic of Cultural Properties”

United Kingdom, 21-22 February 2002

UK National Commission for UNESCO and UK Department of Culture

Private meetings concerning the Parthenon Marbles and UK accession to the UNESCO 1970 Convention

Colombia, 23-26 April 2002

UNESCO-ICOM-Colombian Ministry of Culture
“Third Regional Workshop to Fight Against Illicit Traffic of Cultural Property”

Russian Federation, 17-20 September 2002
Ministry of Culture of Russia, ICOM Russia and UNESCO Moscow Office
“Regional Conference on the Illicit Traffic in Cultural Property”

Republic of Korea, 30 September - 3 October 2002
Korean National Commission for UNESCO
“International Expert Meeting on the Return of Cultural Property and the Fight Against its Illicit Trafficking”

France, 29-31 October 2002
INTERPOL
“5th International Symposium on Works of Arts, Antiques and Cultural Property”

United Kingdom, 22 November 2002
The Institute of Art and Law - The Art Law Centre of Geneva,
“Conference on the Implementation of the UNESCO 1970 Convention”

Belgium, 12 December 2002
European Commission Forum on Prevention of Organized Crime

2003

Belgium, 10 January 2003
Belgian Senate
“Restitution of Cultural Property: What Role for Belgium?”

Colombia, 17 January 2003
Meetings with Minister of Culture and experts to discuss improvement of Colombian laws to protect cultural heritage and potential ratification of UNIDROIT.

Cooperation with INTERPOL, the International Council of Museums, UNIDROIT and the World Customs Organization

22. The Secretariat maintains a very good working relationship with each of these Organizations. In particular, an expert/representative from each usually participates in the regional meetings organized by UNESCO to discuss the illicit trafficking, and return and restitution, of cultural property. These representatives make valuable contributions and render the meetings more comprehensive. Co-operation at the operational level (for example on objects reported to the Secretariat as stolen) is also very fruitful.

23. A member of the Secretariat attended the twenty-first session of the World Customs Organization Enforcement Committee Meeting in February 2002. At this meeting the Enforcement Committee concluded that it should prepare Guidelines for a uniform export certificate for cultural property that would serve as a standard model for cultural property in all countries. Based on the model used in the European Union, this

standard export certificate will include the minimum of essential details and will be proposed to all States for their use. The Secretariat is following-up with the WCO on its progress in this endeavor.

Bilateral Agreements with the United States of America

24. Within the framework of Article 9 of the 1970 Convention, under U.S. implementing legislation (Convention on Cultural Property Implementation Act - USC 2600 et seq.), States Parties to the 1970 Convention may request import restrictions on objects from their heritage. Currently cultural objects from Bolivia, Cambodia, Cyprus, El Salvador, Guatemala, Italy, Mali, Nicaragua and Peru are subject to import restrictions; they may only enter the United States if they are accompanied by an export license issued by the country of origin (unless they left the said country before these restrictions came into force). Honduras has applied for protection and a decision is pending. For more information, see <http://exchanges.state.gov/culprop>.

Promotion of the Object-ID Standard

25. The Secretariat has actively promoted the making of inventories in general, and presented in particular the Object-ID method and checklist in meetings on the illicit trafficking of cultural property. From 20 through 22 January 2003, a sub-regional training workshop on Object-ID was organized with the UNESCO Amman Office. Participants from Iraq, Jordan, Lebanon and Syria were trained by an expert from INTERPOL. Likewise the Secretariat is organizing a second training workshop in Spring 2003 with the Ministry of Culture of Eritrea.

26. Written materials on the Object-ID standard published by the J. Paul Getty Trust are very useful to promote Object-ID and the checklist is regularly disseminated in several languages by the Secretariat. The Secretariat is reviewing with the J. Paul Getty Trust a Licensing Agreement that would allow UNESCO to translate, publish and distribute J. Paul Getty Trust copyrighted materials on Object-ID. The J. Paul Getty Trust has not created any software to implement Object-ID, however the INTERPOL database of stolen objects is compatible with and recognizes all the categories of the Object-ID standard. Finally, the UNESCO Cultural Heritage web site has a link to the Object-ID web site.

Computerized Databases: Legislation and Stolen Cultural Property

27. Frequently law-makers, lawyers, customs officers, antiquities dealers and private individuals need to consult the laws of a given State with regard to, among others, importation or exportation of cultural property. There is growing demand for a web site that maintains the current cultural heritage laws of States. In response to this need the Secretariat is creating a web page on the UNESCO web site where, with the necessary assistance of Member States, an electronic version of Member States' legislation, and import and export certificates if any, should be available to the public and maintained. The Director-General will shortly be issuing a letter to all Member States asking them to submit to the Secretariat a complete copy of their State's legislation on cultural property.

28. During the Fifth International Symposium on Works of Arts, Antiques and Cultural Property organized by INTERPOL last October in Lyon, the topic of databases on stolen property was discussed. INTERPOL maintains its own such database. There are also several useful private and commercial databases such as *Invaluable* and the *Art Loss Register* that charge a fee for their services. Because of the growing international dimension of trafficking, it would be desirable to consolidate all existing databases so that in the event a cultural object is stolen only one thorough or “universal” data base would need to be consulted. Such database should be free of charge and accessible by all. However, it would be costly to maintain it and the cooperation of the auction houses would be crucial.

United Nations

29. By its resolution 56/8, adopted on 21 November 2001, the United Nations General Assembly proclaimed 2002 as the United Nations Year for Cultural Heritage.

UNESCO was named as the lead agency. To make its action known, the Secretariat prepared a special press kit that included a section on illicit trafficking of cultural property and the kit was widely disseminated.

30. On 14 December 2001 the UN General Assembly adopted Resolution A/RES/56/97 “Return or restitution of cultural property to the countries of origin.” This Resolution encourages the continued promotion of the various Conventions protecting cultural heritage and all other activities related to the fight against the illicit trafficking of cultural property and the issue of return or restitution of cultural property to its countries of origin.

Pakistan and Iraq

31. Recommendations 5 and 6 of the last Committee session concerned the threat to Pakistani and Iraqi cultural heritage. In this connection the Director-General sent a letter dated 4 April 2002 to all Member States citing Article 9 of the 1970 Convention, reminding them of the particular circumstances in Pakistan and Iraq and encouraging their concerted effort to “determine and carry out the necessary measures to prevent irremediable injury to the cultural heritage of the[se] requesting State[s].”

IV. AFGHANISTAN

32. Since the installment of the Afghan Interim Administration, UNESCO was very active within the United Nations in defining an overall strategy for the reconstruction of Afghanistan. At the same time, the Afghan Interim Administration officially requested UNESCO to coordinate all international efforts for the rehabilitation of Afghan cultural heritage. The Secretariat has made good progress to date, particularly in the reconstruction of the Kabul National Museum and raising public awareness of the trade of illicitly trafficked Afghan cultural property. On 1 March 2002 the Director-General and the Afghan Minister of Information and Culture, Mr M. Raheen, signed a Memorandum of Understanding on the rehabilitation of the National Museum of Kabul.

33. Recently the GTZ, German Government Cooperation Agency funded emergency action to protect the Kabul National Museum from winter damage. The

Greek Government will shortly start carrying out a project for the rehabilitation of the Kabul National Museum building and the conservation of its remaining collection. Training of museum personnel in conservation of objects is being carried out by the *Délégation Archéologique Française en Afghanistan* (DAFA), the *Istituto Italiano per l'Africa e l'Oriente di Roma* and the British Museum, and basic conservation equipment has been provided by the *Centre d'Etudes et de Recherches Documentaires sur l'Afghanistan* (CEREDAF).

34. In the past two years, UNESCO has entered into three agreements whereby Afghan cultural property is held and conserved in professional conditions outside of Afghanistan, to be returned to Afghanistan when the Kabul Museum is completed and UNESCO determines that it is the appropriate time to repatriate the objects. Briefly, the agreements consist of the following:

- Agreement with the Afghanistan Museum in Bubendorf

The Afghanistan Museum in Bubendorf, Switzerland, under the direction of Mr Paul Bucherer-Dietschi, was established in July 2001. It negotiates to persuade owners of Afghan cultural property to donate objects to the museum with the understanding that the objects will ultimately be returned to Afghanistan.

- Agreement with the Foundation of Cultural Heritage

The agreement with the Foundation of Cultural Heritage (Japan), under the direction of Professor Ikuo Hirayama, was established in June 2001 to support the Foundation in taking into custody Afghan cultural property available on the art market, in particular objects looted from museums or found during illicit excavations, and conserving them for their eventual return to Afghanistan.

- Agreement with the Society for the Preservation of Afghanistan's Cultural Heritage (SPACH)

Within the framework of the agreement with SPACH, which was established in July 2001, the Society shall negotiate with owners of Afghan cultural property to give into SPACH's custody objects that SPACH will place safely in museums, in order to return these objects to Afghanistan at the appropriate time.

35. In addition to these agreements, a member of the Secretariat presented UNESCO's activities on preserving Afghan cultural property to the Fifth International Symposium on Works of Art, Antiques and Cultural Property held by INTERPOL in Lyon last October. As a concrete result of this meeting, an Internet website presenting missing cultural objects from Afghanistan is presently being prepared by UNESCO in cooperation with INTERPOL and the Musée Guimet (France).

36. The Secretariat is assisting the Afghan authorities with an investigation begun by the New Scotland Yard wherein 113 Afghan antiquities, mostly from the ancient region of Bactria, were confiscated by New Scotland Yard agents at Heathrow Airport in October 2001. The individuals trafficking these antiquities were unable to prove ownership or establish the provenance of the objects. With the Secretariat's assistance, the Permanent Delegate of Afghanistan to UNESCO officially claimed the objects and is requesting New Scotland Yard to transfer the objects to the British Museum to professionally maintain them until UNESCO and the Government of Afghanistan notify the British Museum that conditions are adequate to return the Afghan antiquities to the Kabul Museum.

37. The Secretariat has decentralized funds to the UNESCO Kabul Office to obtain the assistance of a legal expert to work with the Afghan authorities to harmonize their cultural heritage legislation with the provisions of both the UNESCO 1970 and UNIDROIT 1995 Conventions, with a view to Afghanistan's imminent ratification of these two Conventions

V. INFORMATION DISSEMINATION

38. The Secretariat has recently elaborated three information kits for promotion of (1) the 2001 Convention for the Protection of Underwater Cultural Heritage, (2) the 1954 Hague Convention and its two Protocols (protection of cultural heritage in the event of armed conflict) and (3) this Committee, restitution issues and its International Fund.

39. The very useful handbook "Preventing the Illicit Traffic in Cultural Property" is newly available in Russian, in addition to the Chinese, English, French and Spanish versions. The Arabic translation will be available for distribution in September 2003.

40. The book "Conventions and Recommendations of UNESCO Concerning the Protection of the Cultural Heritage" is newly available in Russian.

41. The book "Cultural Rights and Wrongs" has been translated into Arabic and will be available for distribution in the coming months.

42. The University of Senghor in Egypt, with assistance from UNESCO, UNIDROIT and the *Agence intergouvernementale de la francophonie*, published in December 2001 a book and CD-Rom "droit et Patrimoine en Afrique" which is a compilation of selected, current cultural heritage legislation of the following countries: Algeria, Angola, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Comores, Congo, Cote d'Ivoire, Democratic Republic of Congo, Egypt, Ethiopia, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Morocco, Maurice, Mauritania, Niger, Nigeria, Rwanda, Senegal, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe.

43. The web site www.unesco.org/culture/legalprotection is regularly updated and has a wealth of information on UNESCO's activities vis-à-vis the UNESCO Conventions, the Committee and all other actions to help Member States prevent the illicit trafficking of cultural property and facilitate the return and restitution of illicitly appropriated cultural property. It is a major source of information for Member States and the general public.