

INTERNATIONAL HELLENIC UNIVERSITY

The role of UNESCO in cases of return of cultural property to their countries of origin. The work of the UNESCO "Intergovernmental 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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Abstract

This dissertation was written as part of the MA in Art, Law and Economy at the International Hellenic University and it examines the role of UNESCO in cases of repatriation requests of cultural property from their countries of origin. It also outlines how the UNESCO "Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation" contributes to that mission. What role does the Organization and its Conventions play? How much has been achieved since the Committee's establishment? By examining the results from the research on the 1970 UNESCO Convention, its developing features throughout the years and the Intergovernmental Committee's structure and work we obtain a clear view of the developments on cultural property restitution worldwide. By analyzing the cases that were successfully resolved thanks to the Committee's involvement we comprehend its complex impact and major influence. In conclusion this dissertation presents an appraisal of the overall contribution of UNESCO and the 'Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation' and the expectations on cultural property restitution in the foreseeable future.

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Introduction

The illicit removing of cultural property from its place of origin is not only a great loss to the country concerned and its peoples, but also turns against all principles culture stands for. Cultural property is taken out of context that is to say out of its natural environment, is stripped off its meaning and cut off from its natural, cultural and geographical background. Culture is the identity of a nation and its removal obliterates its past.

There are many factors that can cause the impoverishment of a country: armed conflicts, natural disasters, famine, diseases, are only a few. However, in all these cases, impoverishment has a chance of being remedied, by laboriousness, ingenuity, sudden wealth and above all, if things in the future turn out right. Unfortunately, in the case of impoverishment due to illicit removal or destruction of cultural property, there is absolutely no way to remedy this loss, which besides its material aspect, has also its cultural, historical and even political ones, because the people concerned are being deprived of part of their past. In many instances, it is a major political and other upheavals that have created the ground for such clandestine illicit operations. Loss, destruction, removal or illicit movement of cultural property thrives, especially in areas facing armed conflicts.

Therefore, it is only the restitution of cultural property taken illicitly from its place of origin that will restore the damage caused. This will not only restore the damaged cultural identity and bring back the misappropriated cultural heritage, but will also restore a sense of dignity to those who have the feeling of being deprived of their past.

It goes without saying that cultural property constitutes a priceless asset for local, national and international communities alike. In addition to national governments, The United Nations Educational, Scientific and Cultural Organization (UNESCO) is very actively involved in promoting the protection of the national cultural heritage and has a unique responsibility as the sole UN agency with the mandate of promoting the stewardship of the world's cultural resources at all levels. The responsibility for safeguarding, returning and reconstructing cultural property to the countries of origin begins at the highest international level, but also involves governments, civil society, academic and artistic leadership and of course every country's peoples that feel that they share a common cultural heritage. Therefore, under the auspices of UNESCO, Member-States try to cooperate actively in a spirit of mutual understanding and dialogue for resolving issues of restitution of cultural property to countries of origin.

I. The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property (1970)

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property (1970), is the first universal instrument dedicated to the fight against illicit trafficking of cultural property and deals with this problem by means of administrative procedures and State action. It was adopted on 14 November 1970 in Paris at the 16th General Conference of UNESCO and came into force on 24 April 1972. It was mainly established because a number of countries who were States parties of UNESCO were concerned because of the removal of cultural property from their countries of origin during the 1960s. This Convention contains a very broad definition of cultural heritage; within article 1 deemed cultural heritage to be *'property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science'* and it does not work retroactively. Therefore, it does not cover any of the historic cases of removal of cultural property that took place before the Convention has formally entered into force for both the States involved. In other words, it practically focuses on preventing the illegal exportation and theft of the modern times and since it is not self-executing, it requires that the State Parties pass the necessary implementing legislation into their national law system¹.

The oldest international treaty on the protection of cultural heritage was the 1954 'Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict'. The widespread adoption of the Hague Convention paved the way for the protection of cultural property and for the establishment of a legal framework that would protect the signatories, especially in the context of war. However, over the years it started being considered outdated, therefore the 1970 Convention was the one that established a framework for cooperation in an international level, in order to reduce the illicit trade or removal of cultural heritage across global borders and fight the illicit movement.

It mainly imposes obligations on States Parties and their main duties are: a) the adoption of specific services for the protection of cultural property; b) the introduction of a certification system; c) the enforcement of penalties; and d) the control of trade in cultural objects. Another key point of this Convention is the one mentioned in

¹ "The Settlement of International Cultural Heritage Disputes" by Alessandro Chechi (page: 101), Oxford University Press, 2014. Printed

Article 7, which refers to a State party's duty to facilitate the recovery from its territory of stolen and inalienable foreign cultural objects. More specifically, according to article 7(a) States parties undertake to adopt measures to prevent museums and other institutions from acquiring illegally obtained cultural objects and according to article 7(b)(ii) they undertake, at the request of the State party of origin, to take the appropriate measures to recover and return any cultural property such as mentioned above. In both cases the aforementioned cultural property would be imported after the adoption and ratification of this Convention in both States concerned, under the condition that the requesting State owes to compensate the innocent purchaser or the person that has valid title to that property².

However, in contrast to these provisions, the Convention does not seem to have an actual power over the States parties to pursue the return of illegally removed antiquities. Furthermore, this prerequisite object to the common law principle which assures that an innocent purchaser acquires no legally binding title from a thief. Therefore, there has been a strong criticism over the obligation of theft victims to practically re-buy their property, not mentioning the fact that many countries of origin cannot afford to offer such a compensation. Another side of criticism refers to the Convention's 'uneven distribution of benefits and burdens among member nations', which translates to the fact that its provisions aim to assist source nations but the countries that import the artifacts are left to finance the litigation and transaction costs³.

Some of the preventing measures that the Convention requires its States parties to adopt are also: the establishment of inventories (article 7(b)(i), export certificates, monitoring trade, educational campaigns and imposition of penal or administrative sanctions. However, the Convention is not able to focus on a broad range of cultural objects and this conflicts with the general interest of the international community to conserve and protect the cultural heritage. In addition to that, the limitation of the inventories do not comply with the scale of illicit trade. The Convention also adopts an International cooperation framework which mainly aims to strengthen the cooperation between States parties and under Article 9, it gives the possibility to adopt special measures such as import and export controls⁴. Even though the

² "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property – 1970"
(<http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/1970-convention/>)

³ "The Economics of Antiquities Looting and a Proposal Legal Alternative" by L.J. Borodkin Vol.95 Columbia Law Review (pages: 377-417, 389). Printed

⁴ "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property – 1970"

Convention aims at the international cooperation in the battle against illicit trafficking, it also establishes some evident limitations: for instance, while the exporting State is bound to prohibit the export of cultural objects without an export certificate, the importing State is not obliged to prohibit their import without such a certificate; the acquisition of illegally imported cultural objects is prohibited only for the museums and other institutions of that kind and the obligation to return such objects regard only the objects that have been stolen from museums and similar institutions, without including the cases where individuals claim their missing property; illegally excavated archaeological objects are excluded from the application of the 1970 Convention and at the same time States Parties should take all the necessary measures in order to recover and return cultural objects that have been stolen from religious or secular public monuments, museums or similar institutions, under the condition that they have been documented as part of their collection⁵. And this protection regards objects that, according to the 1970 UNESCO and 1995 UNIDROIT Conventions, constitute cultural 'heritage' or 'patrimony', which are distinguished from the ordinary human artifacts by their cultural "importance"⁶.

Furthermore, one of the main reasons for criticism is the fact that according to the Convention's restitution procedure, only States and not individuals, can bring restitution claims. It is widely accepted that the 1970 Convention focuses on the diplomatic cooperation rather than the judicial settlement of disputes. The only way that the Convention can facilitate the issue of dispute settlement is mentioned on article 17(5) and provides the UNESCO's good offices in order to reach a settlement between two States parties of the Convention, regarding a dispute over its implementation. This is practically the only provided mechanism for resolving restitution disputes under the auspices of this Convention. Moreover, the 1970 Convention has been criticized for its lack of any formal means of resolving disputes regarding cultural property between States Parties. These disputes could in theory be put to the International Court of Justice in Hague but it is very unlikely that the actual restitution of the cultural objects would happen through that way⁷.

Nowadays, UNESCO counts 129 states that are parties to the treaty. Thereafter, there have been several updates and amendments to the original treaty that have taken

[\(http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/1970-convention/\)](http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/1970-convention/)

⁵ "The Operational Guidelines to the 1970 Convention and Evolutionary Trends In International Law on Restitution Of Removed Cultural Properties" by Tullio Scovazzi (Legal Expert, University of Milano)

⁶ "Who Owns the Past?: Cultural Policy, Cultural Property, and the Law" by Kate Fitz Gibbon, Rutgers University Press, (page: 276) 2005. Printed

⁷ "The Return of Cultural Treasures" by Jeanette Greenfield, Cambridge University Press, (page: 259) 1996. Printed

place during the years. There have also been other international conventions that were adopted afterwards in order to complete the provisions and mechanisms provided by the 1970 Convention such as: the 1995 'UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects', the 2001 'UNESCO Convention on the Protection of Underwater Cultural Heritage' and the 2003 'UNESCO Convention for the Safeguarding of Intangible Cultural Heritage'.

II. ‘The Operational Guidelines’ to the 1970 ‘Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property’

For the sake of the implementation of the 1970 Convention, the States Parties adopted by consensus the ‘Operational Guidelines’ during their third Meeting which was held on 18-20 May 2015. Even though they are not binding, these Guidelines play an important role to the interpretation of the several provisions of the Convention, especially due to the recent changes of the customary international law in the cultural property field. These interpretations relate mostly: to the application of the law of the State in whose territory the property was originally located to regulate ownership of movable cultural property; the right of every State to adopt a list of cultural properties of general State ownership; the presumption of illicit export for cultural objects without an export certificate; the minimizing the level of proof required to request the restitution of illegally excavated cultural objects; the obligation of the possessor of a removed cultural object to prove due diligence in order to receive compensation for its restitution; and finally, the effort to retrieve a mutually acceptable agreement in cases where the principles of the 1970 Convention do not apply. In other words, the Operational Guidelines provide a framework for facilitating the application of the 1970 Convention and include reasonable interpretations of some of its provisions, while at the same time they constitute a step forward in the development of customary international law⁸.

⁸ “The Operational Guidelines to the 1970 Convention and Evolutionary Trends In International Law on Restitution Of Removed Cultural Properties” by Tullio Scovazzi (Legal Expert, University of Milano)

III. The ‘Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP)’

1. Historical background

a) The establishment of the Committee

In 1976, under the aegis of UNESCO, a committee of experts worked closely in Venice in order to find sustainable solutions regarding the restitution of cultural property that was lost either due to foreign or colonial occupation, or was object of illicit trafficking before the 1970 Convention’s entry into force, for States concerned. The *‘Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP)’* was created by the resolution 20 C4/7.6/5 at the 20th Session of the General Conference of UNESCO in 1978⁹.

During the preparatory works before the establishment of the Committee, the General Conference of UNESCO first adopted the ‘Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property’ during its thirteenth session held in Paris, in 1964. At the twentieth session of the General Conference in 1978 another recommendation on the same subject was adopted, the ‘Recommendation for the Protection of Movable Cultural Property’. The purpose of those two recommendations was to protect the cultural heritage of the States Members by eliminating the illicit trafficking. Furthermore, the Resolution 3.428 of the UNESCO General Conference that was adopted in 1976 at its eighteenth session also drew attention to the 1943 Declaration of London¹⁰. However, the main reaction of UNESCO that led to the establishment of the Intergovernmental Committee (ICPRCP) was the adoption of the Resolution 3187(XXVIII) with the title ‘Restitution of Works of Art to Countries Victims of Expropriation’ in 18 December

⁹ “Restitution of Cultural Property- Historical Background”
(<http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/intergovernmental-committee/historical-background/>)

¹⁰ “International Law, Museums and the Return of Cultural Objects” by Ana Filipa Vrdoljak, Cambridge University Press (page: 212) 2006. Printed

1973 by the UN General Assembly¹¹. This recommendation made a specific reference in its preamble to the UN General Assembly Res.1514 (XV). Moreover, in the UN General Assembly Resolution 3187, the term 'restitution' was used and created a debate regarding the proper choice of title for the Intergovernmental Committee. When the Committee of Experts convened by UNESCO in 1976, the term 'return' was added in order to include objects that had been subject of illicit trafficking. After some negotiations at the General Conference of UNESCO regarding the adoption of the draft Statutes the result was the final title of ICPRCP, retaining the term 'return' and 'restitution' and complementing with the phrase 'in case of illicit appropriation'¹².

The main issue that needed to be resolved was the lack of international mechanisms and that is why the Director-General of UNESCO was invited to approve the establishment of an international instrument that would operate as a mediator between the concerned countries and would facilitate bilateral agreements for the restitution or return of cultural property. The Statutes of the Committee indicates all the criteria under which a restitution may take place in article 3 (paragraph 2) by specifying that *'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'*¹³. Like the 1970 Convention, the Committee by using the terms 'state', 'nation' and 'peoples' interchangeably, it privileges the State. Only a State that is a Member State or an Associate Member of UNESCO can make a claim or participate in the Committee's composition¹⁴. In the same Statute it is also determined that a State can bring a case before the Committee only in case the bilateral negotiations with the State in which the requested cultural object is situated have failed so far. However, it should be clarified that this Committee does not have any jurisdictional power to rule over disputes between States, but it operates as a permanent advisory body and offers the floor for out-of-court negotiations and discussions. The ICPRCP also promotes

¹¹ "Art and Cultural Heritage: Law, Policy and Practice" by Barbara T. Hoffman, Cambridge University Press (page: 140) 2006. Printed

¹² "Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects" by Lyndel V. Prott, UNESCO (page:xxi, Note on Terminology). Printed

¹³ 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 (Adopted by 20 C/Resolution 4/7.6/5 of the 20th session of the General Conference of UNESCO, Paris, 24 October-28 November 1978)

¹⁴ "International Law, Museums and the Return of Cultural Objects" by Ana Filipa Vrdoljak, (page: 214), Cambridge University Press, 2006. printed

mechanisms that raise awareness against illicit trafficking of cultural objects and aims at the ultimate prevention of this phenomenon.

Moreover, the ICPRCP came to life in order to assist UNESCO Member States in dealing with cases falling outside the framework of existing and non-retroactive conventions and to facilitate the reconstruction of the cultural heritage of former colonies through the repatriation of cultural objects from the institutions that are currently held. In general terms, the emphasis was given into fighting the illicit traffic of cultural property¹⁵. The Committee that was formed after this meeting was a permanent intergovernmental instrument that was independent from the 1970 Convention. At its 13th Session in 2005, the UNESCO General Conference adopted the 33 C/46 Resolution that defined explicitly the function of the Committee as a mediatory and conciliatory body, in order to facilitate the main purpose of the Committee which is the restitution of cultural objects. In Section B, paragraph 5 of the above mentioned Resolution, it is specified that: “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. Contrary to arbitration and judicial ruling, conciliation and mediation are not binding and not judicial means of dispute settlement”¹⁶.

Since the Committee’s establishment, only eight cases have been brought to it for resolution. One of the main reasons for this small number of cases is the unequal political influence between former colonial powers and requesting States. Another reason for the so-far low popularity of the restitution procedure is the fact that the State-owned museums do not usually support the repatriation of cultural property, but on the contrary, they claim that these artifacts were obtained in compliance with law and customs that were in force at that period of time. They also usually maintain that the requesting State cannot provide for the necessary facilities, expertise and resources to preserve correctly these valuable objects. Furthermore, we can also notice that the procedure of the submission of a restitution request at the ICPRCP is

¹⁵ “The Settlement of International Cultural Heritage Disputes” by Alessandro Chechi (page: 103), Oxford University Press, 2014. Printed

¹⁶ Resolution 33 C/46 in 2005 (Section B. par. 5- Consideration to include mediation and conciliation in the Committee’s mandate)

rather complicated or not available to many States because there is lack of information than is not easily available¹⁷.

b) The establishment of 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” (ICPRCP)

When the ICPRCP was created in 1978, it was suggested that a Fund should be established as well to facilitate the function of the Committee. In addition to that, this initiative was recommended by the “Study on the Principles, Conditions and Means for Restitution or Return Of Cultural Property in View of Reconstituting Dispersed Heritages”, carried out by the ‘International Council of Museums (ICOM)’ in 1977.

During the 30th session of the UNESCO General Conference, in November 1999, after taking under consideration that a necessary step towards the fight of illicit trafficking was the acquisition of available resources, the ‘Fund of the Intergovernmental Committee’ was established, in agreement with the Recommendation No.6 (that was adopted in 1999 by the 10th Session of the Committee). This Fund aims to support the efforts of the Members States that are trying to acquire the cultural property that has been stolen or illegally exported from their territories and also contribute to the fight of illicit traffic in cultural property. It also aims to contribute to the training and the strengthening of museums systems, particularly regarding the: the verification of cultural objects by experts, arranging the facilities to exhibit the artifacts in satisfactory conditions, insurance costs, transportation, and training of museum professionals in the originating countries of cultural objects. It is maintained by voluntary contributions from States and private parties.

In March 2001, the Director General of UNESCO launched a general request in order to reinforce the mission of the Fund and contribute financially to its efforts and ultimately facilitate the effective restitution of cultural property to its State of origin.

¹⁷ “International Law for Common Goods,: Normative Perspectives on Human Rights, Culture and Nature” by Federico Lenzerini, Ana Filipa Vrdoljak, Bloomsbury Publishing (page: 252) 2014. Printed

2. Composition of the Committee

According to Article 2 of the Statutes of the ICPRCP¹⁸ the Committee is composed of 22 Member States of UNESCO that the General Conference elects at its ordinary sessions, taking under consideration the necessity to ensure equitable geographical distribution and appropriate rotation, as well as the representative character of those States in conjunction with the contribution they are able to make to the restitution or return of cultural property to its countries of origin. Furthermore, each Member State of the Committee shall notify the Secretariat of UNESCO of the names of its representatives, alternates, advisers and experts¹⁹. The committee holds ordinary plenary sessions at least once but not more than twice every two years and these sessions of the Committee are convened by the Secretariat of the Committee in accordance with the instructions of the Bureau. The meetings of the Committee are taking place at UNESCO Headquarters and they may change location if so decided by the majority of its members. In addition to that, extraordinary sessions are convened by decision of the Committee itself, or at the request of ten of its members. The Committee is supposed to submit a report on its activities at each ordinary session of UNESCO's General Conference.

When it comes to the provisional agenda of the sessions of the Committee, it shall be prepared by the Secretariat in consultation with the Chairman and it shall include: items that the Committee or the Bureau have decided to submit, the ones that have been proposed by Member States and Associate Members of UNESCO and the ones that have been proposed by the organizations of the UN system with which UNESCO has concluded mutual representation agreements, items proposed by the Director-General and lastly, 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.

Regarding the voting system, each Member State of the Committee has one vote, except from the States that are involved in an offer or a request for the restitution or return of cultural property. This State can continue taking part in the Committee's proceedings, but without the right to vote, while the Committee deals with the request of offer²⁰.

¹⁸ 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 (Adopted by 20 C/Resolution 4/7.6/5 of the 20th session of the General Conference of UNESCO, Paris, 24 October-28 November 1978)

¹⁹ UNESCO/ICPRCP- Rules of Procedure. Rule 1-2 (Membership, Sessions)

²⁰ UNESCO/ICPRCP- Rules of Procedure. Rule 8 (Voting)

3. Tasks of the Committee

According to article 3 paragraph 3 of the Statutes of the Committee, its main task is dealing with requests of restitution or return of cultural objects that have a significant historical and spiritual value to a Member State or Associate Member of UNESCO and which have been stolen or taken away from the State's grounds due to a foreign or colonial occupation²¹. The Committee meets every one or two years and acts as an advisory body which facilitates the mediation between States that claim the same cultural property. It mainly provides a forum for negotiations regarding claims for restitution or return of cultural property in case of theft or illicit trafficking, where the Provisions of the 1970 Convention cannot be applied. Acting as an advisory instrument, the Committee does not have an actual legal power over the cases that handles but it provides a forum for discussion and also promotes the creation of tools that aim to protect cultural heritage. Some typical examples of those tools are: campaigns concerning raising awareness, establishing mediation and conciliation rules on claims regarding cultural heritage, the establishment of the 'model Export Certificate for cultural objects', the 'Database of National Cultural Heritage Laws' and the 'Code of Ethics for Dealers in Cultural Property'.

Regarding the procedure, the requesting State shall first try to resolve the conflict through bilateral negotiations with the State where the claimed artifact is located. If those efforts fail, only then the requesting State can bring the case before the ICPRCP. In 1981, a "Standard Form Concerning Requests for Return or Restitution" was introduced by the ICPRCP, to be filled out by both parties involved. Finally, a request for return or restitution shall be submitted at least six months before the Session of the Committee in order to be examined.

In general terms, the ICPRCP has achieved: to create a favorable atmosphere towards returns through conciliation, mediation and negotiations; to offer advice to States of that have claims of cultural property in or out of the Committee; to assist those States by giving directions on how to protect their cultural heritage (e.g. by making inventories); to promote the 1954 'Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict' and its two protocols (1954 and 1999), the 1970 'Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property', the 1995 'UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects' and the 2001 'UNESCO Convention on the

²¹ 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 (Adopted by 20 C/Resolution 4/7.6/5 of the 20th session of the General Conference of UNESCO, Paris, 24 October-28 November 1978). Article 3, paragraph 3

Protection of the Underwater Cultural Heritage’ and report on their implementation; to establish mechanisms that improve the Committee’s functionality such as the ‘Object-ID’ (the international standard created by ICOM that gives basic information about cultural objects in order to facilitate their identification in case of theft²²) and the UNESCO ‘World Customs Organization Model Export Certificate for Cultural Property’; and finally to promote the work of the Committee and the issues it has been dealing with through the Media²³.

4. Working Methods

a) Sessions

Regarding the periodicity of the Committee, it meets in regular plenary session at least once but not more than twice every two years. The Committee’s last session was held on 1-2 October 2014 at UNESCO Headquarters in Paris, France. The main points that were made during this last session were: The promotion of the ‘International Code of Ethics for Dealers in Cultural Property’, the ‘Model Export Certificate for Cultural Objects’, the ‘UNESCO-UNIDROIT Model Provisions on State ownership of Undiscovered cultural property’ and also the Recommendation on the International Exchange of Cultural Property (1976); the authorization of the use of the Fund of the Committee in order to establish a database on return and restitution cases operational in the short term, and request the Secretariat to present to the next ordinary session a report on last developments regarding the database; the development of initiatives to raise public awareness on the real nature, scale and scope of the question of the return and the restitution of cultural property; finally, the presentation of a specified methodology dedicated to the training of cultural heritage professionals²⁴. According to the Committee's Rules of Procedure, extraordinary sessions may be scheduled, if necessary.

²² Object ID- The World Museum Community (<http://icom.museum/programmes/fighting-illicit-traffic/object-id/>)

²³ “Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects” by Lyndel V. Prott, UNESCO (page:16). Printed

²⁴ DECISION 19.COM 4 of the Nineteenth Session of ICPRCP, UNESCO Headquarters, Room XI, 1 – 2 October 2014

b) UNESCO's Partners in the Fight against Illicit Traffic in Cultural Property

Intergovernmental Organizations:

- ICCROM; The International Centre for the Study of the Preservation and Restoration of Cultural Property, is an intergovernmental organization (IGO) that focuses on the conservation of cultural heritage. It currently counts 129 Members States, through which it is represented in an international level.
- INTERPOL; as the largest international police organization, it provides a hi-tech infrastructure that facilitates the exchange of information about criminal actions regarding cultural property. In this area, INTERPOL serves as a central service and gives access to the tools that identify patterns in art thefts such as the multiplication of counterfeit and forged works, or the online selling of artifacts of dubious provenance. Based on INTERPOL's experience the States Parties are encouraged to cooperate with INTERPOL in order to work out a method by which the cultural property deriving from clandestine excavations is secured.
- WCO; The World Customs Organization (WCO) is an intergovernmental organization based in Brussels, Belgium that is specialized in Customs matters. With its worldwide membership, the WCO was initially established to improve the efficiency and effectiveness of customs administration. Moreover, the WCO serves the 'Harmonized Commodity Description and Code System' and also administers the 'World Trade Organization's Agreements on Customs Valuation'. The Organization's main aim has been the protection of legitimate international trade and the promotion of anti-counterfeiting and illicit trafficking initiatives.
- UNIDROIT; the 'International Institute for the Unification of Private Law' is an independent Intergovernmental Organization based in Rome, Italy. Its main purpose is the harmonization of private international law and more specifically commercial law. It also deals with the drafting of international Conventions and the formulation of model laws and uniform law instruments. In relation to the 1970 Convention, UNIDROIT's contribution includes: working on the private law aspects of the fight against illicit traffic in cultural objects (on the basis of an Agreement that entered between UNESCO and UNIDROIT in 1954 containing provisions specifically on mutual consultations, exchange of information, reciprocal representation and technical cooperation), monitoring and promoting the 1995 UNIDROIT 'Convention on Stolen or Illegally Exported Cultural Objects' participating in expert studies and co-organizing with

UNESCO regional meetings or workshops for the fight against illicit trafficking of cultural property.

- UNODC; the 'United Nations Office on Drugs and Crime' (UNODC) is a global agency that was established in 1997 and is dedicated to the fight against international crime, illicit drugs and terrorism. Regarding the protection of cultural heritage, UNODC helps Governments deal with smuggling counterfeit cultural objects and illicit trafficking of cultural property between countries and continents.

Non-governmental Organizations:

- ICOM; The International Council of Museums (ICOM) was established in 1946 and is the only Organization of museums and museum professionals that aims at the protection of cultural and natural heritage. ICOM counts approximately 30.000 members in 137 countries and has facilitated the preservation and conservation of cultural property in various times through the years. Furthermore, ICOM cooperates closely with UNESCO and has partner relations with the UN Economic and Social Council, the World Intellectual Property Organization, INTERPOL and WCO.

5. Achievements of the Committee

a) The 2011 UNESCO and UNIDROIT 'Model Provisions on State Ownership of Undiscovered Cultural Objects'

One of the most important contributions of the 'UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation (ICPRCP)' and the UNIDROIT Governing Council was their cooperation towards the protection of cultural property and the establishment of the '*Model Provisions*' and their explanatory guidelines²⁵. During the extraordinary session of the ICPRCP in November 2008 in Seoul, one of the main issues that were discussed was the vague and insufficient legislation on undiscovered antiquities. More specifically, it was underlined that such lack of precision in national legislation often created legal problems when another country would request

²⁵ "UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects" (<http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/standards-for-ownership/>)

restitution of its cultural property. The ICPRCP promoted the idea of cooperation between UNESCO and UNIDROIT in order to compose a new committee of independent experts ('Expert Committee'), representing their relevant geographical area, that would create a draft model law that would assist source countries to prevent illicit trafficking. Therefore, it was suggested that some Provisions should be established in order to protect cultural heritage and be incorporated into each State's national law. The aim of this initiative was to equip all States with explicit legal provisions that would guarantee their ownership of cultural objects that were illegally excavated and to facilitate their restitution in case of illicit export. After three formal meetings of the new Expert Committee in Paris (20.09.2010, 14.03.2011, 29.06.2011) they agreed on a draft model law that was named 'Model Provisions on State Ownership of Undiscovered Cultural Objects'²⁶. At its 17th Session that took place in Paris (July 2011), the ICPRCP examined the Model Provisions in accordance with the explanatory guidelines, adopted a Recommendation regarding the finalization of them and invited the expert committee to adjust all the observations that were made in the guidelines. The UNIDROIT Governing Council also agreed to that finalization and encouraged the Secretariat of UNESCO to continue the promotion of their work²⁷. These Provisions are not binding as a legal instrument as their main role is to assist source countries to establish and recognize State ownership of undiscovered cultural objects and create an efficient legislative body for heritage protection²⁸. The Model Provisions were made brief, comprehensible, easy to access and in accordance with both the 1970 UNESCO and the 1995 UNIDROIT Conventions. Moreover, they constitute the first international attempt to harmonize national cultural property laws in order to facilitate the application of ownership declarations in foreign countries. These six provisions express the legal status of undiscovered cultural property and also the methods by which it is enforced through each nation's legislation. The Model Provision 5 on inalienability and the Model Provision 6 are extended to both discovered and undiscovered cultural property and may provide a mechanism that is too simplistic to surpass the obstacles in civil procedures that prevent the restitution

²⁶ "Cultural Property in Cross-Border Litigation: Turning Rights into Claims" by Mara Wantuch-Thole, Walter de Gruyter GmbH & Co KG (VII. The 2011 UNESCO and UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects) 2015. Printed

²⁷ "Explanatory Report with model provisions and explanatory guidelines (TEXTS - UNESCO - UNIDROIT MODEL LEGISLATIVE PROVISIONS ON STATE OWNERSHIP OF UNDISCOVERED CULTURAL OBJECTS (2011).

(<http://www.unidroit.org/instruments/cultural-property/model-legislative-provisions>)

²⁸ "UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects—Restitution of Cultural Property"

(<http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/standards-for-ownership/>)

of cultural heritage²⁹. Finally, it should be noted that the value of this instrument depends on the number of nations that will incorporate it to their national legislation.

b) The ‘International Code of Ethics’ and the ‘Appropriate rules of Procedure’

One of the main achievements of the Committee was the preparation of the ‘International Code of Ethics’ on dealing in cultural property, which was adopted and recommended to all States Parties and Trade Organizations by the UNESCO General Conference in 1999. This Code complements the 1970 ICOM Declaration on the Ethics of Collecting and the 1986 ICOM International Code of Professional Ethics which have introduced many museums and art dealers into the principle of respect for cultural property interests of others. The ‘International Code of Ethics’ has been widely accepted by art and antiquities trade organizations in many countries around the world and this is considered to be one of the most encouraging development of recent years for both the art trade professionals and the cultural heritage protection³⁰.

Another accomplishment of the Committee was the establishment of ‘Appropriate rules of procedure’ that would facilitate its mediation and conciliation functions. In 2007, during its 14th Session, the Committee introduced the Draft Rules of Procedure on Mediation and Conciliation in accordance with article 4, paragraph 1 of the Statutes of ICPRCP to its Member States. The ‘Rules of Procedure for Mediation and Conciliation’ were finally adopted during the Committee’s 16th session in September 2010³¹.

²⁹ “Cultural Property in Cross-Border Litigation: Turning Rights into Claims” by Mara Wantuch-Thole, Walter de Gruyter GmbH & Co KG (VII. The 2011 UNESCO and UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects) 2015. Printed

³⁰ “Understanding International Art Markets and Management” by Iain Robertson, Psychology Press (page: 225-226), 2005. Printed

³¹ “Art, Cultural Heritage and the Market: Ethical and Legal Issues” by Valentina Vadi, Hildegard E. G. S. Schneider, Springer Science & Business Media, (page: 95), 2014. Printed

c) Successful Cases of Restitution under the auspices of ICPRCP

- **2011: Germany – Turkey**

The case regarding the ancient ‘Sphinx of Hattusa’³² that was excavated at Boğazköy (Turkey), had initially been presented to the Intergovernmental Committee, ICPRCP, in 1987 and was followed by a 70-year process of wrangling over the valuable sculpture³³. The 3,000-year-old sphinx from the capital of the Hittite empire had been part of the Pergamon Museum’s collection in Berlin (Germany) since 1934. Due to the initial appeal to ICPRCP, a Recommendation was adopted in 1987 in order to achieve comprehensive bilateral negotiations as soon as possible and eventually lead to a mutually acceptable solution³⁴. Shortly after the adoption of another Recommendation that the Committee had made in September 2010 at its 16th Session, Turkish and German experts met in Ankara in April 2011 and co-signed a Memorandum of understanding that specified that the Sphinx would return to Turkey during the 25th anniversary of the inscription of Boğazköy on the ‘World Heritage List’ as ‘Hattusha thr Hittite Capital’. A crucial point that eventually led to that result was the ultimatum that Turkey's Culture Minister Ertugrul Gunay gave to the Museum in February of the same year to return the sculpture or otherwise German archaeologists would no more be allowed to carry out excavations in Hattusa. Research at Hattusa had begun in 1906 and represented one of the longest and most significant projects in central Anatolia. Due to the request of repatriation, the Sphinx was mainly considered as a ‘hostage object’ that transformed into an object of negotiation and an agent of goodwill, eventually bringing forward national and international diplomatic means of resolution. Therefore, the Pergamon Museum agreed to the return of the artifact, but made it clear that this was a singular case that is not applicable to other cases and was not to be viewed as a precedent within the global museum community. As the top cultural official of Angela Merkel, Bernd Neumann underlined: *‘this repatriation is a voluntary gesture of friendship between Germany and Turkey’* (Deutsche Presse-Agentur 2011). The reason why it was difficult to resolve the issue of repatriation was the fact that neither the Turkish authorities nor the Museum had legitimate ownership documents at their disposal. This case of restitution of cultural property is a typical example of how objects and archaeology can interfere into the political relations between two countries and how debates over this can jeopardize

³² “Return or Restitution Cases- Successful cases under the aegis of the ICPRCP 2011 (<http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/return-or-restitution-cases/>)

³³ “Germany returns ancient sphinx to Turkey” by Eric Kelsey, 28.07.2011 (<http://www.reuters.com/article/us-germany-turkey-artefact-idUSTRE76R58U20110728>)

³⁴ “Handbook on the Law of Cultural Heritage and International Trade” by James A R Nafziger, Robert Kirkwood Paterson, Edward Elgar Publishing (pages: 451-452) 2014. Printed

the continuation of cultural research. It is also a reminder that the permission to conduct excavations and archaeological studies, from the perspective of the host nation, is part of a larger system that includes museums and preservation initiatives. The work of foreign archaeologists in various nations has often been in the spotlight of diplomatic arguments and bureaucratic procedures since it can only take place at the invitation and permission of national governments. Getting through these procedures by professionals of the field can be challenging and complicated and often gets them involved in nationalistic clashes over access to landscapes, objects and monuments of the past³⁵.

- **2010: Switzerland – United Republic of Tanzania**

On 10 May, 2010 the United Republic of Tanzania and the Barbier-Mueller Museum of Geneva signed an agreement in order to donate the 'Makonde Mask' to the National Museum of Tanzania, under the aegis of the International Council of Museums (ICOM) in Paris. This artifact is a typical 'lipiko' mask, the most recent type of Makonde Mask which is characterized by its realism and caricature features and until 1960s it was worn during male initiation festivals by dancers. The restitution ceremony took place in the presence of UNESCO, the ICOM Director General Mr. Julien Anfruns and representatives from both the Republic of Tanzania and the Swiss museum. In July 1990 the Barbier-Mueller Museum informed ICOM that the Mask that was purchased in September 1985 in Paris might have been missing from the Dar Es Salaam Museum, according to information provided by Pr. Enrico Castelli of the University of Perugia in Italy. It was indeed proven that the artifact was stolen from the National Museum of Tanzania in 1984³⁶. More specifically, the Minister for Natural Resources and Tourism Shamsa Mwangunga, stated that between 1984 and 1986, 16 artifacts and the Mask were stolen from the National Museum of Tanzania³⁷. In 2002 the Barbier-Mueller Museum formally indicated the conditions under which the repatriation of the Mask could be prepared, however, the involved parties could not reach to an agreement regarding the issue of ownership of the artifact. In 2005 the ICPRCP amended its statutes to facilitate mediation and conciliation in order to reserve some confidentiality, instead of the public character of the proceedings before

³⁵ "United States Cultural Diplomacy and Archaeology" by Christina Marie Luke, Morag M. Kersel, Routledge (page: 44-46) 2013. Printed

³⁶ "Makonde Mask- Signing of an agreement for the donation of the Makonde mask from the Barbier Mueller Museum of Geneva to the National Museum of Tanzania (ICOM Press Release), (page: 3-6) 10.05.2010. Printed

³⁷ Article "Makonde artefact finally returned to Tanzania" by Patrick Kisembo, 14.05.2010 (<http://www.ipppmedia.com/frontend/index.php?!=16660>)

the Committee itself³⁸. The ICOM, the Swiss authorities and the UNESCO Secretariat have been discussing about this case since 2006, when the negotiations stopped and the United Republic of Tanzania filed a request for the return of the Mask at the Secretariat of the UNESCO ICPRCP, trying to reach a bilateral agreement³⁹. As a response, the Barbier-Mueller Museum filed a formal and official complaint against Tanzania with the Federal Office of Culture of Switzerland⁴⁰. Even though African countries were actively involved in the UN General Assembly that led to the establishment of the ICPRCP, they have not made a lot of use of the Committee's good offices in the recovery of their expropriated cultural property until this particular case⁴¹. Finally, in 2009 the United Republic of Tanzania accepted the terms proposed by the Swiss Museum in 2002. More specifically, in 6 November, 2009 a governmental delegation of Tanzania met the representatives of the Barbier-Mueller Museum in Geneva in order to conduct the final discussions and negotiations. The return of this cultural object is the successful outcome of more than 20 years of negotiations and efforts on behalf of the two parties and the ICOM's good offices. After this positive experience in a restitution case, in 2011, ICOM in cooperation with the World Intellectual Property Organization (WIPO), established a mediation programme for the museum sector. This mediation programme is administered by ICOM-WIPO in Geneva and it facilitates both members and non-members of ICOM⁴⁶.

- **1988: USA – Thailand**

UNESCO has evidently assisted in the successful restitution to the country of origin in quite a number of high-profile cases, one of which took place in 1988 when the Phra Narai lintel of Prasat Phnom Rung in Northeast Thailand was returned through mediation from the United States⁴². In 1960 a major reconstruction work began at this important hill-top temple that was not completed until 1988. In the meantime, the lintel that decorated the entrance of the central complex of the eleventh century Khmer sanctuary, depicting the god Vishnu leaning on a dragon-like serpent, was

³⁸ "Art, Cultural Heritage and the Market: Ethical and Legal Issues" by Valentina Vadi, Hildegard E. G. S. Schneider, Springer Science & Business Media (page: 80) 2014. Printed

³⁹ "Return or Restitution Cases- Successful cases under the aegis of the ICPRCP 2011 (<http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/return-or-restitution-cases/>)

⁴⁰ "Makonde Mask- Signing of an agreement for the donation of the Makonde mask from the Barbier Mueller Museum of Geneva to the National Museum of Tanzania (ICOM Press Release), (page: 4) 10.05.2010. Printed

⁴¹ "Art and Cultural Heritage: Law, Policy and Practice" by Barbara T. Hoffman, Cambridge University Press (page: 140) 2006. Printed

⁴² "Understanding Art Markets: Inside the world of art and business" by Iain Robertson, Routledge, 2015. Printed

placed along with the other lintels on the ground due to the rebuilding and at some point it went missing. It was not until 1973 when Prince Subhadradis Diskul, a senior Khmer scholar accidentally saw the lintel in an exhibition at the Art Institute of Chicago. It has been donated by an American benefactor, James Alsdorf, to the Art Institute of Chicago and the museum denied at first to return the artifact to Thailand claiming that it was acquired legally. As the years went by and the Phanom Rung complex was reaching the final stages of restoration in preparation for the official opening in May 1988, the claim for the lintel's return became more and more of an urgent national matter and the Thai government promoted a campaign to achieve its repatriation. Due to this campaign, Thailand was pictured through the Media as a poor country that was victimized by rich Western collectors and art institutions that wanted to possess artifacts of national emblem value⁴³. Thailand's leading pop group Carabao made a hit record with the song called Thaplang (lintel) and the key line: *"Take back your Michael Jackson, just give us our Phra Narai!"*⁴⁴. Cultural property was protected by the 1970 UNESCO Convention, however, the Thung Saliem Temple, which owned the statue, had not registered it as a cultural property with the Fine Arts Department at the time. Therefore, it was not possible to ask the owner to return the antiquity unconditionally⁴⁵. The Art Institute of Chicago was refusing to return the artifact, until 1988 when an American academic from Chicago, Allan Drebin, was informed about the dispute and decided to start negotiations with the museum. The Elizabeth F. Cheney Foundation, of which he was the director, donated the equivalent value to the museum and therefore after a few months the lintel was returned⁴⁶.

- **1987: Former German Democratic Republic – Turkey**

The former German Democratic Republic returned to Turkey more than 7.000 cuneiform tablets from the old Hittite capital of Hattusha (now Bogazköy) in 1987. These tablets were extremely significant because they gave information about Hittite empire and its language, religion and cults, politics, historical geography and generally about aspects of life in the ancient Near East⁴⁷. Even though Turkey has been

⁴³ "Counterheritage: Critical Perspectives on Heritage Conservation in Asia" by Denis Byrne, Routledge, (Chapter: 8. Moments in a History of Collecting- Collecting against the foreigner) 2014. Printed

⁴⁴ Article "Prasat Phanom Rung" by Ayutthaya Historical Research (<http://www.routeyou.com/en-th/location/view/48163693/prasat-phanom-rung>)

⁴⁵ Article "A history of theft and recovery" by Jeerawat Na Thalang, 26.10.2014 (<http://www.bangkokpost.com/print/439664/>)

⁴⁶ "Cambodia" by Michael Freeman, Reaktion Books (page: 115-117) 2004. Printed

⁴⁷ "Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects" by Lyndel V. Prott, UNESCO (page:414). Printed

operating an exceptionally strict regime of State ownership and export prohibition of all cultural and natural property that is found in its territory, in conjunction with strict controls of archaeological excavations and dealers of such objects, there has been observed a steady raise of illicit exports of antiquities from the country⁴⁸. Turkey has been an active member of the 'Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation' and had brought the case against the German Democratic Republic⁴⁹ that eventually led to the direct return of the objects. In 1975 Turkey made a request for the return of the cuneiform tablets from the German Democratic Republic. Eventually, in October and November 1987, due to the intervention of the UNESCO ICPRCP, 7.332 cuneiform tablets were returned to Turkey by the German Democratic Republic⁵⁰. In their final communication the Ministers of Foreign Affairs and heads of delegations of the Movement of Non-Aligned Countries to the 1987 General Assembly Session in New York, October 5-7, underlined the right of all countries to safeguard their cultural heritage and the right of non-aligned countries to the restitution of cultural property⁵¹.

The main function of the Committee is negotiating bilateral agreements between nations regarding the return of cultural objects. Even though the Committee cannot impose direct sanctions, it constitutes a respectful advisory body and its advice is taken under serious consideration⁵². In September 1987, the Secretary-General of UNESCO submitted a report by the Director-General on the return or restitution of cultural property to the countries of origin. UNESCO's efforts to implement the 1985 recommendations of the ICPRCP by promoting bilateral negotiations and international technical cooperation were described as steps towards fighting illicit trafficking of cultural property. Moreover, ICPRCP approved the final versions of the standard form of requests for return or restitution and of the guidelines for its use.

⁴⁸ "Handbook on the Law of Cultural Heritage and International Trade" by James A R Nafziger, Robert Kirkwood Paterson, Edward Elgar Publishing (page: 452) 2014. Printed

⁴⁹ "Zeitschrift für vergleichende Rechtswissenschaft: Einschliesslich der ethnologischen Rechtsforschung" by Ferdinand Enke., (page: 200) 1996. Printed

⁵⁰ "Understanding International Art Markets and Management" by Iain Robertson, Routledge (page: 224) 2005. Printed

⁵¹ "Yearbook of the United Nations. 41.1987(1992)" by Martinus Nijhoff Publishers (pages: 628-629) 1992. Printed

⁵² "Legal and other Issues in Repatriating Nigeria's Looted Artefacts" by Babatunde Adebisi, Lulu.com (page:162) 2009. Printed

- **1986: USA – Jordan**

The Intergovernmental Committee at its fourth session, in April 1985, examined the request submitted by Jordan on 11 October 1983, for the return of the ‘Sandstone Panel of Tyche with the Zodiac’ from the Cincinnati Art Museum (Ohio, United States of America). The artifact was the upper part of a Nabatean sand-stone relief, of which the lower part is located in the Archaeological Museum of Amman. The Permanent Delegate of the United States of America received this request in 28 November 1983, but no official response was received by the Secretariat within the period of one year from the date of its submission. At the same time, the Secretary-General of ICOM wrote to the Director of the Cincinnati Art Museum an informal letter to discuss the museum’s position on this request, highlighting the scientific and archaeological principle of reuniting dismembered artifacts and offering the good offices of ICOM for this purpose. The Director of the Cincinnati Museum responded that the request has been discussed thoroughly some years ago and that the Museum does not consent to the reunification of the sculpture in Amman, maintaining its first thesis dated since 1980⁵³. In order to proceed with the restitution, the Committee requested the Director-General of UNESCO to organize a professional fact-finding mission in cooperation with ICOM, due to the need for further facts and documentation. However, the mission was not eventually carried out since the Museum changed its attitude and the situation was resolved in the meantime. The Cincinnati Arts Museum and the Department of Antiquities of Amman decided by common consent to jointly exchange moulds of the respective parts of the work that was missing by each of them. In this way both museums were able to exhibit the Panel of Tyche in its entirety and therefore promote the cultural heritage of Jordan. This agreement was reached by the two parties with the assistance of a member of the Executive Council of ICOM underlines the successful outcome of the negotiations initiated in 1978 and constitutes a representative example of international cooperation. The Chairman of the Committee and all its Members were informed of the positive outcome by the Secretariat of the Committee who sent them copies of a letter dated 6 July, 1986 addressed to the Secretary General of ICOM, Mr. Patrick Cardon from Mr. Adnan Hadidi, Director-General of the Department of Antiquities of Jordan⁵⁴.

⁵³ ICPRCP Fourth Session (Athens and Delphi, Greece, 2-5 April 1987) - “Report by the Unesco Secretariat on the measures taken to implement the recommendations of the third session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (9-12 May 1983). (page: 2)

⁵⁴ ICPRCP Fifth Session (Paris, 27-30 April 1987)- “Report by the Unesco Secretariat on the measures taken to implement the recommendations adopted by the Intergovernmental

- **1983: Italy - Ecuador**

Scholars are observing that Italy is usually willing to proceed to voluntary cultural property restitution⁵⁵. In January 1983, after a seven-year litigation process by the Court of Turin, Italy returned more than 12.000 pre-Columbian objects to Ecuador, acknowledging that these artifacts were significant to the people of Ecuador and their cultural heritage. The aforementioned objects had been illegally removed in 1974 and brought to Italy in 1975 by a single Italian dealer, while hundreds of sites had been damaged. After their arrival in Italy, they were confiscated by the public prosecutor in Genoa following the request of Ecuador. During the litigation the artifacts were held at the 'Federico Lunardi Museum' in Genoa⁵⁶. During the 1980s the association of culture with human rights and democracy was becoming one of the main fields of activation of UNESCO. The Organization's official documents from that period of time call for attention and awareness regarding the protection of cultural pluralism between different nations throughout the world⁵⁷. The contribution of the Intergovernmental Committee (ICPRCP) was basically moral support to the Ecuadorian authorities during their efforts for restitution of the objects, which was recognized as a major factor in the successful outcome of the case⁵⁸. Furthermore, after this restitution case in 1983, the United States of America signed the UNESCO Convention and this provided an important breathing space to countries with a rich archaeological and ethnological heritage such as Guatemala, Mexico, Ecuador, Peru, Italy and many more. Most of these countries belong in the developing world and their national budgets do not suffice for them to deal with the problems of destruction and illicit trade of their cultural heritage⁵⁹.

Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its fourth Session. (pages: 1-2)

⁵⁵ JCCC Honors Journal "Cultural Property: How Italy is Addressing the Theft of Artistic Heritage" by Anna Geilman, Johnson County Community College, Volume 5- Issue 1 (page: 10) Fall 2013. Printed

⁵⁶ Article "The Theft and Redemption of History" by Hladik, Jan, UN Chronicle (<https://www.questia.com/read/1G1-54259354/the-theft-and-redemption-of-history>)

⁵⁷ "The Diplomacy of Culture: The Role of UNESCO in Sustaining Cultural Diversity" by Irena Kozymka, Palgrave Macmillan (page: 41) 2014. Printed

⁵⁸ "Understanding International Art Markets and Management" by Iain Robertson, Routledge (page: 224), 2005. Printed

⁵⁹ "Art and Cultural Heritage: Law, Policy and Practice" by Barbara T. Hoffman, Cambridge University Press (page: 94) 2006. Printed

6. Greece's Contribution to the ICPRCP

a) General Aspects

Greece has continually participated in the 'Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation', as one of its 22 elected State Members since 1985. In 1988 Greece was elected Rapporteur, while in 1989, 1999, 2001 and 2002 Vice-Chairperson, due to her active participation and knowledge of the Committee's objectives and issues. Actually the 4th and the 5th Intergovernmental Committee sessions were held in Greece in 1985 and 1991 respectively.

Greece placed in front of the Committee in 1984 the request for the return of the Parthenon Marbles, which at present lie in the British Museum. This case has become a major issue for the Committee. Since 1984 the Greek request is pending in front of the Committee and at every session a recommendation is adopted by the Committee for the return of the Parthenon Marbles to Greece after extensive discussion from the State Members.

Apart from the case of the return of the Parthenon Marbles, Greece is active on various issues of cultural interest, placing in front of the Committee relevant concrete proposals. Due to her great interest for the protection of cultural heritage, Greece has many times stated to the Committee her wish to offer archaeological assistance to other State Members, as well as her collaboration concerning the cataloguing of archaeological finds. Greece also takes an active part in the Committee supporting other requests for the return of cultural property to its countries of origin.

At the present time Greece is actively gathering material concerning cases of return of cultural property through agreements of loans, exchanges or other practices, in order to submit this material to the Secretariat of the Committee.

b) The Parthenon Marbles case

One of the most significant case studies that have not been resolved yet, with specific reference to the 1970 Convention, is the Parthenon Marbles case. The Marbles are fragments from the Parthenon from Athens, Greece and have been situated in the British Museum since 1852. Originally, Thomas Bruce 7th Earl of Elgin, British Ambassador to the Ottoman court in Constantinople had removed numerous sculptures and half of the frieze from the Parthenon in Athens and shipped them to London with an alleged permission, from the governing Ottoman authorities. This

permission- the 'firman'- was a document that proved that Lord Elgin legally acquired the Marbles, but the only existing copy is an Italian translation⁶⁰. Furthermore, there are some doubts, according to David Rudenstine of the Cardozo Law School in New York, regarding the authenticity of this document and some objections about its validity since it is not signed⁶¹. This argument was opposed by the fact that the Italian version is documented specifically in the historical record and its authenticity is established and proven. One of the main answers to the illegal removal of the Marbles accusations was Elgin's allegation that he was performing an act of 'rescue' from the consequences of a free market in antiquities encouraged by the high Western demand in a country that had weak administrative and judicial mechanisms. Furthermore, one of the reasons for withholding the Marbles within the British Museum and refusing to repatriate them back to Greece is the degeneration of the corrosive atmosphere in Athens and the formation of a toxic cloud of fume surrounding the city that has eroded a part of the marble that is still in place. Therefore, the British Museum argues that if the sculptures were left at the Parthenon, they would eventually be destroyed⁶².

However, the Museum itself violated a number of rules and regulations against their preservation during the years, one of which took place in 1937-1938. More specifically, the British Museum scraped the surfaces of the sculptures with metal chisels and harsh abrasives in order to make them look 'whiter'. A very significant damage was made but the British Museum refused publicly acknowledge of what had happened. From 1938 and for sixty years, the authorities of the British Museum were caught up in a lot of contradictions that aggravated their position year by year. They impeded research, disseminated false historical information and repeatedly broke the laws, conventions and regulations while claiming to be the legitimate guardians of the monument⁶³. Regarding the 1970 Convention, it would have no practical power over the Marbles as they were moved long before the 1970's and furthermore, although Greece was a signatory to the Convention the United Kingdom was not at the time and has been since 2002.

It was 1981 when the disputes regarding the repatriation of the Marbles were revived because of the Minister of Culture in Greece, Melina Merkouri, who led the official Greek governmental campaign for the return of the Marbles in Greece. Since then, the

⁶⁰ "Who Owns Antiquity?: Museums and the Battle over Our Ancient Heritage" by James Cuno, Princeton University Press, (preface) 2010. Printed

⁶¹ "Imperialism, Art and Restitution" by John Henry Merryman, Cambridge University Press, (page: 78) 2006. Printed

⁶² "The Elgin Marbles: Should They be Returned to Greece?" by Christopher Hitchens, Robert Browning, Graham Binns, Verso, 1997. Printed

⁶³ "Imperialism, Art and Restitution" by John Henry Merryman, Cambridge University Press, (page: 87-88) 2006. Printed

repatriation claim has become a major cultural issue that was later on linked with significant cultural projects such as the construction of the New Acropolis Museum in Athens in 2007. The idea of 'reunification' was also carried forward in order to stress out that the full purpose of the Parthenon Temple can be fully comprehended only if the Marbles are located there, within their original context. Both the repatriation and the reunification arguments fit within the claim for return; 'Repatriation' refers to the return of an object to a party that is the true owner or traditional guardian and for whom the object has a special value in order to preserve the cultural and spiritual identity or history of the party. On the other hand, 'return' refers to the return of an object to the rightful individual or specific community⁶⁴. The Parthenon Marbles is one of the cases that have been brought to the ICPRCP; more specifically in 1984 a request was made by Greece for the return of the Marbles and it was officially rejected by the British Government. The case has been discussion agenda item at subsequent Committee meetings but there is little evidence of action occurring between meetings⁶⁵. One of the British Museum's arguments is that the Marbles are part of a world heritage collection that was brought together and made accessible to a greater audience. By this claim the British Museum advocate the 'cultural internationalism' which is alleged to allow the greater knowledge and appreciation of heritage by larger parts of the world population⁶⁶. This allegation is the basic notion of the 'universal museums'. More specifically, eighteen of the world's greatest museums and galleries, including the British Museum, have adopted a statement supporting the idea of the 'universal museum' which is the display and protection of different cultural traditions of humanity under one roof in such a way that their universal significance cannot be valued in that level anywhere else in the world⁶⁷. They also claim that returning these objects would create a precedent and result in the emptying of many of the world's greatest museums that possess collections from different places⁶⁸.

In November of 2005, a non-governmental Committee representing fifteen States was established under the name 'International Organization for the Reunification of the Parthenon Marbles'. In November of 2006, Greece took the initiative to propose a Resolution in the United Nations General Assembly for the 'Return of Restitution of

⁶⁴ "Museums and Restitution: New Practices, New Approaches" by Dr Kostas Arvanitis, Ms Louise Tythacott, Ashgate Publishing, (page: 163-164)- Claiming the Parthenon Marbles Back: Whose Claim and on Behalf of Whom? By Kalliopi Fouseki, 2014. Printed

⁶⁵ "Law, Ethics, and the Visual Arts" by John Henry Merryman, Albert Edward Elsen, Stephen K. Urice, Kluwer Law International (page: 342) 2007. Printed

⁶⁶ "Intangible Cultural Heritage in International Law" by Lucas Lixinski, OUP Oxford (page: 13) 2013. Printed

⁶⁷ "Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects" by Lyndel V. Prott, UNESCO (page:118). Printed

⁶⁸ "Architectural Conservation in Europe and the Americas" by John H. Stubbs, Emily G. Makaš, John Wiley & Sons, (page: 326) 2011. Printed

Cultural Properties to their Country of Origin' due to an effort to demonstrate the importance of protection of cultural heritage and to provide for the return of cultural treasures that were illegally removed. It was also an initiative taking place in an international level through UNESCO's treaties, Conventions and policies. This Resolution refers to the Recommendations of the ICPRCP⁶⁹.

On 22 June, 2012, during its 18th Session in the UNESCO Headquarters, the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP), adopted a Recommendation. The goal of this Session was to continue the discussion of the case of the restitution of the Parthenon Marbles and to evaluate the implementation of international legal instruments developed to facilitate the restitution of cultural property outside the framework of the 1970 Convention. During this session, the main issue was once again the numerous efforts that Greece had been conducting over the years to get all the parts of the Parthenon reassembled in the new Acropolis museum in Athens⁷⁰. More specifically, the President of the Acropolis museum requested that the discussion be continued regarding the restitution of the fragments and also the digitalization of the Marbles in cooperation with the British Museum Friend. As a response, the Delegation of the United Kingdom once again, pointed out that the decision rested with the Trustees of the British Museum, a global institution that is completely independent of the Government and therefore this issue should be resolved between the Greek Government and the British Museum itself. However, the British representative was in favor of the digital scanning of the sculptures of the Parthenon and in general of the scientific and technical cooperation between Greece and United Kingdom on the continuation of the study of the monument⁷¹.

In 2014, the British Museum has loaned a Greek statue of River God Ilissos to the State Hermitage Museum in St Petersburg, Russia. This movement practically demolishes the British Museum's argument that the claim for the return of the Parthenon Marbles is addressed to the Government and that in reality "that is a matter solely for the Trustees". Since the Government has permitted the loan of the River God to leave the UK, this argument does no longer stand. Both the Government and the Trustees could

⁶⁹ "Utimit: Past Heritage -- Future Partnerships, Discussions on Repatriation in the 21st Century" by Mille Gabriel, Jens Dahl, IWGIA (pages: 118-119) 2008. Printed

⁷⁰ INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION (18th Session), 22 June 2012. Recommendations and Decision (Recommendation No. 5)

⁷¹ REPORT ON THE ACTIVITIES OF THE INTERGOVERNMENTAL COMMITTEE FOR PROMOTING THE RETURN OF CULTURAL PROPERTY TO ITS COUNTRIES OF ORIGIN OR ITS RESTITUTION IN CASE OF ILLICIT APPROPRIATION (2012-2013) V.(a) 6.

probably agree for the Museum to proceed to a non-binding mediation which could result in some partial restitution of the Marbles⁷².

In 2015, The British Museum turned down a request by the Greek Government for a process of mediation facilitated by ICPRCP, claiming again that it is not a government body, therefore there was no role for an intergovernmental agency like UNESCO⁷³. In their rejection letter they also claim that they are retaining the Marbles for the benefit of the world's public, present and future⁷⁴. However, there is no denying that the Parthenon Marbles are significantly important to Greek culture and Greek people and that their reunion is considered a debt of honor towards Greece's history⁷⁵.

⁷² Article "The British Museum has just lost the Elgin Marbles argument" by Geoffrey Robertson, 5.12.2014 (<http://www.independent.co.uk/voices/comment/the-british-museum-has-just-lost-the-elgin-marbles-argument-9907201.html>)

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⁷³ Article "British Museum rejects request for Unesco mediation on Parthenon Marbles" by ekathimerini.com, 27.03.2015 (<http://www.ekathimerini.com/168611/article/ekathimerini/news/british-museum-rejects-request-for-unesco-mediation-on-parthenon-marbles>)

⁷⁴ Article "British Museum declines UNESCO mediation for Parthenon Marbles" by newsroom, 27.03.2015 (<http://en.protothema.gr/britain-says-no-to-unescos-mediation-for-the-greek-parthenon-marbles/>)

⁷⁵ "The official Greek position" by Georgios Voulgarakis, Minister of Culture, Speech, at the presentation of the first fragment of the Parthenon marbles that was returned in Greece by the University of Heidelberg, 05.09.2006 (<http://odysseus.culture.gr/a/1/12/ea121.html>)

Conclusion

In conclusion, this study was set out to explore the role of UNESCO regarding the requests of restitution or return of cultural property to their countries of origin. The Organization has influenced in a significant way the resolution of these cases, mostly through its Conventions like the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. It has also played a decisive role in the battle against the Illicit Trafficking of artifacts that belong to the cultural heritage of a foreign country and has taken determinant measures to protect more efficiently these objects from imminent threats. Furthermore, we examined closely the mission and contribution of the UNESCO Intergovernmental Committee (ICPRCP) that is specialized in dealing with those cases in which the international conventions cannot be applied and it offers a framework for discussion and negotiation. Finally, by comparing and taking a close look at the cases that have been successfully resolved with the intervention of the Committee we manage to form a complete picture of the challenges that the ICPRCP is dealing with during the resolution of the return cases and its overall practical contribution. We make the conclusion that UNESCO and the 1970 Convention in particular, although not perfect, has initiated a lively dialogue on what is cultural heritage and how its ownership can be best protected and through the deliberation with the Member States it gets modernized and tries to live up to the nowadays developments.

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