

GENERAL ARTICLES

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Law, Provenance Research, and Restitution of Colonial Cultural Property: Reflections on (In)Equality and a Sri Lankan¹ Object in the Netherlands²

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¹ Until its independence in 1948, the South Asian country was called Ceylon, and thereafter Sri Lanka, in full: Democratic Socialist Republic of Sri Lanka. The authors use Ceylon for the pre-1948 period, and Sri Lanka for the post-independence era.

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Abstract: The status of colonial objects in European museums touches upon a matrix of legal and historical issues. This article engages with some of them, while referring to the case of a Sri Lankan object in the possession of the Rijksmuseum Amsterdam (RMA) in the Netherlands: a ceremonial cannon looted by the Dutch from the King of Kandy in 1765. The article offers a historical overview of the European colonial domination of Ceylon, distinguishing between the Portuguese, Dutch, and British periods, and for each period distinguishes the nature and the size of the confiscated heritage. It also analyses Sri Lanka's legal title to the cannon, and the discrepancy between the international and mostly Euro-centric legal regime and Sri Lanka's own legal framework. The article moves on to analyses of and reflections about the type of provenance research practiced by the RMA, as well as the broader efforts in the Netherlands for better provenance research. The importance of the cannon for both Sri Lanka and the Netherlands, as well as earlier efforts to retrieve it, are also described and evaluated. In its conclusions, the article proffers suggestions for more balance and equality in the provenance research efforts. The contribution covers legal studies, history, and museum studies and is based on the literature, historical catalogues, and other documents, as well as the practice of UNESCO's Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP).

Keywords: colonial cultural object, Ceylon, Sri Lanka, Rijksmuseum Amsterdam, provenance research, restitution

Introduction

In 2017, as the debate over disputed colonial collections gained momentum in both the Netherlands and Europe, the Rijksmuseum Amsterdam (RMA) began a pilot project to develop a methodology for provenance research of objects with a complicated history. It selected ten objects, among which was a ceremonial cannon which had belonged to the King of Kandy but was looted from him by the Dutch in 1765 (RMA, inventory number NG-NM-1015). To the outside world, the RMA created the impression that restitution was – in contrast to the methodological questions – a different issue at stake. During the first two years of the debate, the museum did mostly in-house research. In 2019, a small RMA delegation visited Sri Lanka to contact experts with whom it could collaborate. Most experts, however, operated under the assumption that they were joining a programme aimed at the restitution of the cannon. In their view, the fact that the cannon belonged to Cey-

lon but was taken by the Dutch had been established much earlier, and Sri Lanka had claimed it already in 1980. The discovery that the RMA delegation was only seeking a methodology created confusion and frustration among several Sri Lankan experts.

Soon after, the RMA decided to cooperate with two other Dutch institutions in a new and broader effort to improve its research methodology. The Dutch government supported this endeavour financially. This larger effort resulted in a report (“the PPROCE report”)¹ in which the cannon was a case-study. The report was presented in March 2022 and included suggestions for methodological matters, while the conclusion of the case-study was that the cannon was war booty, acquired by the Dutch.

It is worthwhile noting that both of the authors of this article have a “relation” with the cannon. We both have published and spoken publicly about it earlier,² and one of us, Naazima Kamardeen, was consulted by the RMA delegation in 2019. This motivated us to reflect on and analyse this type of collaboration in the decolonization of museum collections and the related question of the inequality between the Global North and the Global South.

This article is the result of our reflections and analyses. In it we will explore questions such as: What was the occupation of Ceylon by European powers like? What were the differences and similarities between the Portuguese – who came before the Dutch – and the British, who dominated the island after the Dutch until it gained independence? And what part did each of these three play in the loss of Ceylon’s cultural heritage? Did or does Sri Lanka have legal title of the cannon, and what was the impact of the discrepancy between the international and mostly Euro-centric legal regime and Sri Lanka’s own then-legal framework? Bearing in mind issues of distrust and inequality between former colonies and colonists, what was the provenance investigation of the weapon like? And what does this say about how a former colonizer like the Netherlands conducts this kind of research? What is the importance of the cannon for both Sri Lanka and the Netherlands, and how has the South Asian country tried to retrieve it? Can this article, in its conclusions, come up with suggestions for more balance and equality in provenance research efforts?

¹ J. Mooren, K. Stutje, F. van Vree, *Clues: Research into Provenance History and Significance of Cultural Objects and Collections Acquired in Colonial Situations. Final Report. Pilotproject Provenance Research on Objects of the Colonial Era*, NIOD, Amsterdam 2022, https://pure.knaw.nl/ws/portalfiles/portal/496442096/RAP_PPROCE_FinalReport_ENG_v10_202203.pdf [accessed: 20.11.2022].

² N. Kamardeen, *The Protection of Cultural Property: Post-Colonial and Post-Conflict Perspectives from Sri Lanka*, “International Journal of Cultural Property” 2017, Vol. 24(4); eadem, *Law vs. Justice: The Conundrum of Colonial Cultural Property*, Presentation made at the 99 Questions – Humboldt Forum on 14 October 2021, available at <https://www.humboldtforum.org/en/programm/termin/discourse/law-vs-justice-33537/> [accessed: 27.10.2022]; J. van Beurden, *Treasures in Trusted Hands: Negotiating the Future of Colonial Cultural Objects*, Sidestone Press, Leiden 2017; idem, *Inconvenient Heritage: Colonial Collections and Restitution in the Netherlands and Belgium*, Amsterdam University Press, Amsterdam 2022.

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The story of the cannon of Kandy has particularly interesting historical roots. Throughout history, monarchs have liked to purchase or to be gifted weapons to show their military and political power. The kings of Kandy in Ceylon (1469-1815) were no exception. In 1745 or 1746, Great Officer Lewke Disava gifted a small ceremonial cannon to his king, Sri Vijaya Rajasinha (1739-1747), who displayed it in the palace. It is a “layered object” – cast of Japanese copper, most probably in Batavia (nowadays: Jakarta) and at first sight appearing “like ‘a Kandyan and European amalgam in style’”.³ In 1765, it was captured by soldiers of the Dutch East India Company (VOC). Anno 2022 visitors can admire it in a major display case in Room 1.5 of the Rijksmuseum Amsterdam, where it is displayed together with other captured Kandyan objects. The museum’s website contains the following report about the cannon:

Cannon, anonymous, before 1745 (bronze, silver, gold, rubies, wood) [...] Salutes were fired from this cannon to welcome the visitors of the king of Kandy. His symbols are found on the barrel: a sun, a half moon, and the Sinhalese lion. The Dutch seized the splendid cannon as booty during a military campaign in 1765. They presented it to Stadholder-Prince William V for his cabinet of rarities in The Hague.⁴

Because of Sri Lanka’s 1980 formal request for its return, for many years now the cannon has attracted the attention of academics, museum professionals, and journalists. Sri Lanka’s formal request was submitted by the Director General of National Museums in Sri Lanka. In 2022 his successor, Sanuja Kasthuriarachchi, repeated it verbally.⁵ This latter request has become part of a new phase in the restitution debate, in which stakeholders in both the Global South and the Global North are discussing how to deal with colonial injustices. Inasmuch as the RMA is also influenced by this debate, at the end of 2017 it included the cannon as one of ten objects in a pilot project aimed at the development of a provenance research methodology. In 2019, this research effort entered a second phase, and it was further implemented in collaboration with the NIOD Institute for War, Holocaust and Genocide Studies and the National Museum of World Cultures (NMOV) and was named “Pilotproject Provenance Research on Objects of the Colonial Era” (PPOCE). Now the report has come out, and one of its larger appendices is about the cannon of the King of Kandy.⁶

³ A. Schrikker, D. van den Boogaart, *Provenance Report Regarding Singalees Kanon of Lewuke’s Kanon* (NG-NM-1015), p. 5, https://pure.knaw.nl/ws/portalfiles/portal/488990432/RAP_PPOCE_ProvenanceReport_46_SingaleesKanonLewukesKanon_NG_NM_1015_v10_202203.pdf [accessed: 20.11.2022].

⁴ <https://www.rijksmuseum.nl/en/search/objects?set=NG-NM-1015#/NG-NM-1015,0> [accessed: 02.12.2022].

⁵ Sanuja Kasthuriarachchi said so in a Zoom session during the presentation of the PPOCE report, 17 March 2022.

⁶ A. Schrikker, D. van den Boogaart, op. cit.

Three Periods of Colonial Occupation

Sri Lanka has known three periods of occupation by European powers: a Portuguese (1505-1658), a Dutch (1658-1796), and a British period (1796-1948). The nature of the loss of colonial cultural property differs per period.

Portuguese period

Portugal was the first European country that began colonization, starting with North Africa in 1415. Portugal's expansion contributed to "the transformation of the world as we know it today".⁷ Thanks to "their excellent ships and versatile technicians [...] the extent of the nautical dimension" of Portugal's presence in three continents "is quite staggering".⁸

In 1494, the Treaty of Tordesillas divided the world between Spain and Portugal. Roughly speaking, the east (Africa and Asia) was reserved for Portugal and the west (the Americas) for Spain. The pope asked both European powers to expand the Christian religion.⁹ The treaty and the mission brought the Portuguese explorer, Laurence de Almeida, to Ceylon in 1505. In the following decades, Portugal conquered coastal parts of the island. At the time there were different kingdoms there, with that of Kandy in the interior being the most important. De Almeida's arrival was the start of a lengthy period of violent confrontations, death, and destruction, although the literature is relatively silent about this loss of people. The Portuguese exploited the agricultural land, distributed part of it amongst their own soldiers and settlers, and heavily taxed the local leaders and populations.¹⁰ We have found no information about relics from Buddhist shrines and temples being shipped to Portugal. In 1974 and 1975, Hemasiri De Silva, Director of National Museums in Sri Lanka, examined objects in 27 countries and 140 institutions in the Global North and put the outcome – approximately 5,000 objects – in *A Catalogue of Antiquities and Other Cultural Objects from Sri Lanka (Ceylon) Abroad*. His book, which will be oft-quoted in this contribution, covers

⁷ A. Barros, *Histories that Travelled Along the Seas: The Portuguese Discoveries and the Cultural Transfers Between Oceans*, in: A. Barros (ed.), *The Discoveries and the Origins of Global Convergence*, Câmara Municipal de Porto, Porto 2015, p. 58.

⁸ A. Barros, *The Man Who Knew How to Make Brigantines and Other Stories of the Transfer of Knowledge Between Oceans*, in: A. Barros (ed.), *The Discoveries and the Origins of Global Convergence*, Câmara Municipal de Porto, Porto 2015, p. 210.

⁹ UNESCO, *Treaty of Tordesillas*, <https://en.unesco.org/memoryoftheworld/registry/613> [accessed: 28.11.2022].

¹⁰ J.V. Serrão, *The Portuguese Land Policies in Ceylon: On the Possibilities and Limits of a Process of Territorial Occupation*, in: J.V. Serrão et al. (eds.), *Property Rights, Land and Territory in the European Overseas Empires*, CEHC, ISCTE-IUL, Lisbon 2014, pp. 183-195.

two museums in Coimbra and three in Lisbon. They belong to the very few institutions where De Silva noted “Nil”, i.e. no Ceylonese objects found.¹¹

We now know however that Portuguese museums do have colonial collections from Ceylon and other former colonial possessions. As Kwame Opoku has shown, Portuguese parliamentarian Joacine Katar Moreira proposed early in 2020 to return objects belonging to former colonies that were in Portuguese museums. But her proposal did not have any chance of being accepted. Opoku found ten Portuguese heritage institutions that have colonial objects from the Benin Kingdom in Nigeria, the Ivory Coast, the Democratic Republic of Congo, and Angola in their collections.¹² The International Council of Museums (ICOM) Portugal circulated a questionnaire “among all national museological entities” to find out more about the “presence of objects from outside the European context”.¹³ Of the 67 museums that completed the questionnaire, 52 said they possessed collections from Africa, Latin America, the Middle East, Southeast Asia, and Oceania, varying from two to over 5,000 objects. According to the 2021 ICOM Portugal report, 16% of all colonial objects come from India, while Sri Lanka is not mentioned as a country of origin.¹⁴

So why is Sri Lanka not mentioned? The Portuguese colleagues whom we have consulted¹⁵ were unable to fully answer this question, but their replies offer an insight into the state of the restitution debate in Portugal. It can be summarized in three points. First, unlike most other former colonial powers, Portugal is not very familiar with provenance studies. With the exception of a small group – though slowly increasing in number – provenance researchers are scarce in Portugal. Many Portuguese continue to think that colonialism was beneficial for their colonial possessions. Secondly, in spite of Opoku and ICOM Portugal’s findings, most items in Portuguese museums from colonial areas are said to be objects on demand with local manufacture and characteristics, such as crucifixes, statues of Saint Mary or Saint Anthony. Third, in the 19th century Napoleon’s military captured many pieces from the royal collection, while later in that century elite fami-

¹¹ P.H.D.H. De Silva, *A Catalogue of Antiquities and Other Cultural Objects from Sri Lanka (Ceylon) Abroad*, National Museum of Sri Lanka, Colombo 1975, p. 449; see also N. Kamardeen, *The Protection...*

¹² K. Opoku, *Will Portugal Be the Last Former Colonialist State to Restitute Looted African Artefacts?*, “Modern Ghana”, 28 February 2020, <https://www.modernghana.com/news/986892/will-portugal-be-the-last-former-colonialist-state.html> [accessed: 14.09.2022].

¹³ G. de Carvalho Amaro, D. Felismino, *Resultados do inquérito sobre a presença de património proveniente de territórios não-Europeus em Museus Portugueses*, “Boletim ICOM Portugal: As Coleções extra-europeias” 2021, Série III, nº 17, pp. 125-135, https://icom-portugal.org/wp-content/uploads/2022/01/boletim_ICOM_portugal_17_dez_2021-1.pdf [accessed: 25.04.2022]. The authors approached 414 museums and other heritage institutions, 67 of which answered their questions.

¹⁴ *Ibidem*, p. 131.

¹⁵ Among them: Sofia Lovegrove Pereira (Research Centre for Material Culture, Leiden), António Sousa Ribeiro (Universidade de Coimbra), Gonçalo de Carvalho Amaro (Universidade NOVA de Lisboa), Ricardo Roque (Universidade de Lisboa), Ângela Barreto Xavier (Universidade de Lisboa), Ana Botas (Museu Nacional de Etnologia, Lisbon).

lies, forced by economic constraints, sold their colonial collections to traders and collectors in the United Kingdom and France. We also determined that some ended up in German museums, for instance in Berlin and Munich.¹⁶

Dutch period

When Ceylonese rulers wanted to get rid of the Portuguese, they invoked the help of the Dutch, with their strong ships and armaments. These “helpers” in turn concluded trade agreements with these rulers, acquired a monopoly on the cinnamon trade, and took control of the coastal areas and some interior parts of the country. The Dutch dealt differently with Ceylon’s cultural heritage. In order to maintain good relations with local rulers, they initially operated through “smart diplomacy”, and forbade Dutch missionaries to finish what the Portuguese had begun, namely the destruction of Buddhist temples and monasteries.¹⁷

Soon however, the Ceylonese discovered that the Dutch were no less violent than the Portuguese. There was much fighting, especially with the King Kirti Sri Rajasinha of Kandy. In the Kandyan-Dutch war (1762-1766), VOC soldiers acquired several war trophies and a few religious objects. Most of the booty ended up in the Netherlands, while some religious objects were returned in 1766.

De Silva’s *Catalogue* mentions 300 objects in Dutch institutions such as the Tropenmuseum Amsterdam, the University Library Leiden, the RMA, and Museum Volkenkunde Leiden. Some were taken in the Kandyan-Dutch war. The RMA possesses ceremonial stab weapons and the ceremonial cannon. But it is uncertain how others were acquired. Museum Volkenkunde possesses items that were acquired much later, but never investigated how the possessors from whom they acquired these objects had themselves gotten hold of them.¹⁸

In most of the Dutch historiography, it is hard to find information about casualties in the Kandyan-Dutch war. A standard work in Dutch about wars overseas between 1595 and 1814 mentions mostly deaths on the Dutch side.¹⁹ In a recent book on Sri Lanka published by the RMA, the VOC is said to have suffered “mild losses” in the war against Kandy, while nothing is said about losses on the Kandyan side.²⁰

¹⁶ N. Kamardeen, *The Protection...*, p. 431.

¹⁷ D. Couwenbergh, *De VOC op Ceylon*, “IsGeschiedenis”, <https://isgeschiedenis.nl/node/22909> [accessed: 28.11.2022].

¹⁸ J. van Beurden, *Inconvenient Heritage...*, p. 58.

¹⁹ G. Knaap, H. den Heijer, M. de Jong (eds.), *Oorlogen Overzee: Militair optreden door de compagnie en staat buiten Europa 1595-1814*, Boom Publishers, Amsterdam 2015, pp. 60, 90, 91. In a battle against Portuguese troops in 1603, 50 Dutch soldiers were killed. In a battle against the King of Kandy in 1646 there were 150 casualties on the Dutch side, while over 300 VOC soldiers were taken prisoner by Kandy. And in a final battle for Colombo against the Portuguese in 1655 and 1656, 300 VOC soldiers died.

²⁰ L. Wagenaar, *Cinnamon and Elephants: Sri Lanka and the Netherlands from 1600*, Rijksmuseum, Amsterdam 2016, p. 121.

British period

The British, fearing French control over Dutch colonial possessions and offering help to the King of Kandy, forced the Dutch in 1794 to leave the island. Again however, the situation of the Ceylon natives did not improve. In 1815, the Kandyan kingdom – as the last independent monarchy on the island – came to an end. Other kingdoms had fallen earlier. Like the Dutch, the British took war booty, but in much larger quantities. De Silva's *Catalogue* is proof of this. It contains ten times as many objects – 3,000 – in the United Kingdom than in the Netherlands. Much of the booty came from the “palace and a grand audience hall” of the Kandyan king. It included ornate clothing and regalia of office, such as a crown and a throne. Some items “no doubt” were pocketed by British soldiers, while in 1820 a large number of items were sold “at public auction in London”.²¹

The disappearance of the kingdoms did not mean the end of the anti-colonial resistance. In 1817 and 1818 an uprising, known as the Great Rebellion, took place and efforts were made to reinstall a new king in Kandy. The British sent Great Officer Keppetipola Disawe to suppress the rebellion, but instead he joined the rebels. The rebellion was quelled however, and Keppetipola was beheaded and his skull was sent to London for research purposes. After Sri Lanka's independence, the skull was defined as an emblem of the new State and repatriated. It was placed in the Colombo Museum and is presently in the Kandyan Museum.²² There were a number of victims reported in this rebellion: some 10,000 Ceylonese died.²³

Unlike the Portuguese and the Dutch, the British acquired two other types of objects: religious items and colonial furniture. An iconic religious object is the 1.43-m-high, bronze gilt statue of Tārā, which is in the British Museum. The British governor, Sir Robert Brownrigg, had removed it without asking anyone's permission. The London museum is hesitant to reveal this part of the acquisition history or Sri Lanka's requests for its return. Former director Neil MacGregor passes by these aspects in his ten-year-old *A History of the World in 100 Objects*,²⁴ and nowadays the museum does not inform the public about this either.²⁵ The British are also known to have taken quite a number of pieces of furniture, although possibly these were objects made on demand and paid for.²⁶

²¹ R. Aldrich, *The Return of the Throne: The Repatriation of the Kandyan Regalia to Ceylon*, in: R. Aldrich, C. McCreery, *Crowns and Colonies: European Monarchies and Overseas Empires*, Manchester University Press, Manchester 2016, pp. 144-145.

²² N. Wickramasinghe, *The Return of Keppetipola's Cranium: The Construction of Authenticity in Sri Lankan Nationalism*, in: G. Pandey, P. Geschiere (eds.), *The Forging of Nationhood*, Manohar, Calcutta 2003.

²³ S. Sanghera, *Empireland: How Imperialism Has Shaped Modern Britain*, Viking, New York 2021, p. 30.

²⁴ N. MacGregor, *A History of the World in 100 Objects*, Penguin Books, London 2012, pp. 294-298.

²⁵ https://www.britishmuseum.org/collection/object/A_1830-0612-4 [accessed: 09.04.2022].

²⁶ A. Jaffer, K. Corrigan, R.D. Jones, *Furniture from British India and Ceylon: A Catalogue of the Collections in the Victoria and Albert Museum and the Peabody Essex Museum*, Peabody Essex Museum, Salem, MA 2001.

The Legal Regime Governing Cultural Property

The international legal regime governing cultural property has been derived from Euro-centric law beginning in the 15th and 16th centuries, when empire-building became a dominant concern of the then European superpowers.²⁷ Most significantly, the emerging (and essentially Europe-centred) field of international law (law of nations) was theorized by the Dutch jurist Hugo Grotius, who wrote the seminal treatise on the law of war and peace – *De jure belli ac pacis* (1625). Although hailed as one of the more progressive thinkers of his time, he too shaped his ideas to suit the commercial needs of his country. As a lawyer to the VOC – which was a primary vehicle for colonial expansion – in his work *The Law of Prize and Booty*²⁸ he supported ideas that “focus on the issue of expanding the power and reach of the Dutch East India Company in its ongoing competition with Portugal in relation to trade in the East Indies”. In this work Grotius advocated the argument that force and conquest could be justified if they resulted in the creation of a more humane society.²⁹ Therefore, forceful invasion was clearly acceptable and deemed legal during the period of colonial occupation.³⁰

Even though the post-Second World War period vehemently denounced the use of force in acquiring territory, the wrongful acts carried out during the colonial period were not denounced, nor were any steps taken to rectify them.³¹ Past atrocities were justified on the basis that they were acceptable *at the time*, and that no restitution was thus required.³² Cultural property was treated the same as any other object of value and therefore it was deemed unnecessary to be restituted.

²⁷ Article 38(1) of the Statute of the International Court of Justice, 26 June 1945, 59 Stat. 1055, 33 UNTS 93, lists the sources that the ICJ uses to resolve disputes. Among these are general principles of law recognized by *civilized* nations (emphasis added). These have been drawn from Western European and American sources, following the principle that they alone were civilized at the time the Second World War ended.

²⁸ A. Anghie, *International Law in a Time of Change: Should International Law Lead or Follow?*, “Amsterdam University International Law Review” 2010-2011, Vol. 26, p. 1319.

²⁹ *Ibidem*, p. 1327.

³⁰ See M. Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300-1870*, Cambridge University Press, Cambridge 2021, p. 283.

³¹ As an example, concession agreements that unfairly allowed the colonial overlords to outsource raw material from the colonies for a pittance were only revised long after those States received independence, and with no compensation paid for previous profits made on the basis of the concession agreements. M. Sornarajah, *The International Law on Foreign Investment*, 3rd ed., Cambridge University Press, Cambridge 2010, p. 74.

³² Several United Nations documents that deal with decolonization do not contain specific references to restitution or the correction of past wrongs. See UNGA, *Resolution 1514 (XV): Declaration on the Granting of Independence to Colonial Countries and People*, 14 December 1960, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples> [accessed: 20.09.2022]; UNGA, *Resolution 43/47: International Decade for the Eradication of Colonialism*, 22 November 1988; UNGA, *Resolution 55/146: Second International Decade for the Eradication of Colonialism*, 6 March 2001, UN Doc. A/RES/55/146.

In order for this approach to be justified, the cultural object was thus essentially regarded as legal “war booty”.

International law defined war booty only in more modern times.³³ Legal instruments are agreed that private property, immovable state property, or movable state property that cannot be used for military operations should be excluded from the definition of war booty.³⁴ Further, it is noted that:

war booty [...] is a concept which relates to the powers of a belligerent, first, over property found on the battlefield, and, second, over property in enemy territory under military occupation as generally understood in land warfare. To use this term to describe the removal of property as reparations which are imposed by a victorious nation upon a vanquished enemy is a complete misconception of its scope.³⁵

Therefore it may be stated that cultural property does not fit the description of war booty. That being the case, there is no justification for its further retainment in the hands of the colonial overlords.

Ownership, trusteeship, and the unique status of cultural property

Western and Eastern legal systems have tended to treat property in fairly different ways. The Western notion of ownership – which was the notion that held sway in many of the colonial powers – recognized three distinct rights in property: *utendi* (use), *fruenti* (enjoyment of fruits), and *abutendi* (destruction).³⁶ Further, the ruler was originally deemed to be the owner of all property and grants of Crown land were given only under special circumstances to ordinary people.

This form of ownership was also seen in early times in Ceylon. After the advent of Buddhism in the country however – and with it the idea that all beings had equal rights – the concept of absolute ownership eroded, leaving in its place the concept of public trusteeship.³⁷ The *Mahavamsa*, or Great Chronicle of Ceylon, re-

³³ See also A. Clapham, *Booty, Bounty, Blockade, and Prize: Time to Reevaluate the Law*, “International Law Studies” 2021, Vol. 97, p. 1207.

³⁴ Instructions for the Government of Armies of the United States in the Field (Lieber Code), 24 April 1863, Article 45; Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, Article 53; High Court of Israel, *Al Nawar v. Minister of Defence et al.*, H.C. 574/82; A.V. Freeman, *General Note on the Law of War Booty*, “The American Journal of International Law” 1946, Vol. 40(4), pp. 795-796.

³⁵ A.V. Freeman, *op. cit.*, p. 797.

³⁶ M. Radin, *Fundamental Concepts of the Roman Law*, “California Law Review” 1925, Vol. 13(3), p. 209.

³⁷ Several studies seem to indicate that the King does not have the ownership of the land, but is the guardian of the land. The King is regarded as a title, not a person. In that sense, items of cultural property (i.e. statues, stupas, and edifices) commissioned by the King cannot be treated as personal property of the King. For a more detailed discussion, see L.S. Perera, *Proprietary and Tenurial Rights in Ancient Ceylon*, “Ceylon Journal of Historical and Social Studies” 1961, Vol. 2, pp. 1-36; W.I. Siriweera, *The Theory of the King's Ownership of Land in Ancient Ceylon: An Essay in Historical Revision*, “Ceylon Journal of Historical and Social Studies” 1971, Vol. 1(1), pp. 48-61; D.N.N.R. Dewasiri, *The Adaptable Peasant: Agrarian Society in Western Sri Lanka*

cords that when Mahinda, the son of King Dharmasoka of India, arrived in Ceylon to spread the word of the Buddha, he found the King Devanampiyatissa about to shoot a deer in the Royal Gardens. He stopped him with the words “O great King, the birds of the air and the beasts have as equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou art only the guardian of it”.³⁸

From then on, the king took on the role of the public trustee. This was also seen in the treatment of cultural objects, which were commissioned for the benefit of the people. Statues and works of art and culture were placed in public places and the ruins of these can be seen even today in these locations. From the commentaries provided by De Silva in his *Catalogue*³⁹ we can ascertain that the different kings of Ceylon gifted to the Portuguese, Dutch, and British royalty objects that were contemporary during their rule. They did not gift articles previously made or manufactured.⁴⁰ This observation lends credence to the position that the king acted as guardian and not as owner, which would have given him free access to all the property available at the time. The fact that the king commissioned new objects for gifting indicates that he did not consider himself to be the “owner” of these objects and works of art.

If we were to extend the application of this principle, we could make an argument that the cultural property of Ceylon, being held in trust by the ruler (or a conqueror), would still continue to be held in trust for the benefit of the people, and then should be given to the beneficiary when the time is right – which could be at a time the beneficiary requests it and has the capacity to manage it. Independence brought with it the legal maturity of the beneficiary, and the various requests made by the post-independence Sri Lanka indicate that the beneficiary has in fact made the request.

Even if we accept that it should be the law of the conqueror that governs cultural property, and that the concept of guardianship has no place in this discussion, those who retain cultural property should be able to forward a convincing argument as to the legal basis on which they continue to hold on to such property. The preceding discussion has already established that even under concepts relating to war booty, the specific type of colonial cultural property is not included as property of the conquering State. Therefore there is no reasonable justification for its further retention in those nations.

under Dutch Rule, 1740-1800, Leiden, Boston 2008. The authors are grateful to Dr D. Thoradeniya, Senior Lecturer, Department of History, University of Colombo, for her contributions on this point.

³⁸ *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment of 25 September 1997, Separate Opinion of Vice-President Weeramantry, ICJ Reports 1997, p. 88. The incident is reported to have taken place around 223 BC; see also the discussion in N. Kamardeen, *The Protection...*, p. 435.

³⁹ P.H.D.H. De Silva, *op. cit.*, p. 72.

⁴⁰ N. Kamardeen, *The Protection...*, p. 436.

The time factor

Temporal factor is of prime significance in international cultural property disputes particularly in the colonial context, since claimed objects may have been lost several decades or even centuries earlier. The first key issue regards the general customary rule of international law, the rule of non-retroactivity of treaties, as codified by the Vienna Convention on the Law of Treaties (VCLT).⁴¹ This, under Article 28, provides that “[u]nless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party”. In fact, two fundamental treaties designed to counteract illicit movement in cultural objects – the 1970 UNESCO Convention⁴² and the 1995 UNIDROIT Convention⁴³ – contain no provision on their retroactivity.⁴⁴ Instead, both treaties provide that their obligations apply only after the entry into force of this treaty in the States concerned.⁴⁵

The 1970 UNESCO Convention calls on States Parties to designate and protect cultural property under their national laws.⁴⁶ The only acknowledgement of cultural property of a previous era is in Article 15, which permits States Parties to make arrangements regarding the restitution of cultural property that was removed prior to the entry into force of this treaty. Thus, the issue of colonial cultural property is relegated to bilateral negotiations, in which the former colonies are at a disadvantage due to their weaker status. In other words, since the regime of the 1970 UNESCO Convention only affects the movement of objects after 1970, it has no bearing on objects from the colonial era. This is also the case of Sri Lanka which gained independence in 1948, and only in 1972 achieved complete independence from the dominion of the United Kingdom, while colonial removals had occurred years before.

As already explained, the second major international law instrument in this field is the 1995 UNIDROIT Convention. This, as the 1970 UNESCO Convention, is neither retroactive nor it specifically addresses the issue of colonial cultural property. In practice, this treaty regime hardly covers colonial loot, although it affirms that the adoption of its provisions “for the future in no way confers any approval or legitimacy upon illegal transactions of whatever kind which may have taken place

⁴¹ 23 May 1969, 1155 UNTS 331.

⁴² UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231.

⁴³ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457.

⁴⁴ See P.J. O’Keefe, *Commentary on the 1970 UNESCO Convention*, 2nd ed., Institute of Art and Law, Leicester 2007, pp. 9-11; L.V. Prott et al., *Commentary on the UNIDROIT Convention*, 2nd ed., Institute of Art and Law, Bülth Wells 2021, p. 106.

⁴⁵ See Art. 7 of the 1970 UNESCO Convention; Art. 10 of the 1995 UNIDROIT Convention.

⁴⁶ Arts. 1, 5.

before the entry into force of the Convention”.⁴⁷ In addition, the 1995 UNIDROIT Convention also sets time limits on bringing actions for the restitution of stolen cultural objects: three years from the time the location of the object and the identity of the possessor are known, and in any event 50 years.⁴⁸ Neither Sri Lanka, the Netherlands, nor the United Kingdom are parties to this treaty. Only Portugal is legally bound by its provisions, and the actual practice of this treaty is still very limited.

Provenance Research

Provenance research is a key duty of every museum. But the nature of this research is changing and this change may be the “most remarkable feature” of the current restitution debate.⁴⁹

Most traditional provenances offer information about the object itself, the beginning and ending dates of the ownership of the object, and the methods of transfer. They mention the catalogues, books, and articles in which it is described, and the museums where it has been displayed. In most provenance reports of colonial cultural objects in Western museums and private collections, the name of the maker, its first user, and the way objects left their communities of origin *remain unmentioned*. Such knowledge does not exist anymore, in part because it is the possessor’s blind spot. That turns these traditional provenance reports into amputated biographies, i.e. a biography which overlooks important elements of an object’s life and history.⁵⁰

Composing a fuller and broader biography and finding information about the people, events, and histories surrounding an object can be complicated, costly, and time-consuming. It also requires extra competences. It can uncover inconvenient truths, such as the pain and anger caused by its disappearance from the original owners/communities – pain and anger which often still exist. Study and re-study of sources in both the archives of former colonizers and sources in former colonies are needed. Cooperation on an equal footing between stakeholders in the Global North and the Global South can be essential. In composing a broader provenance, the research behind it often – if not usually – takes on “political dimensions”, as it needs to “break through existing frameworks and historical perceptions” and help “to ‘heal’ past injustice”.⁵¹

In order to elaborate on provenance research into disputable colonial cultural property, we focus here on the final PPROCE report, funded by the Dutch government, compiled by Dutch institutions, and aimed at developing a methodology to

⁴⁷ Preamble, 6th Recital.

⁴⁸ Art. 3.

⁴⁹ J. van Beurden, *Inconvenient Heritage...*, p. 53.

⁵⁰ *Ibidem*, p. 52.

⁵¹ J. Mooren, K. Stutje, F. van Vree, *op. cit.*, p. 15.

conduct proper provenance research.⁵² An important basis for the draft assessment which the report offers is the 50 case-studies of 65 objects in the National Museum of World Cultures and the RMA. Starting from “the assumption that the restitution procedure provides countries of origin with the opportunity to state the importance of a cultural object when motivating the application for restitution”,⁵³ the draft assessment organizes the provenance research using four sets of criteria.

Part of the *general criteria* is that the research should be an independent scientific historical effort and describe the researcher’s status. The (provisional) results must be published in a language that enables counter-expertise of interested parties from the countries of origin. The second set consists of *historically substantive criteria*. What was the history of the object before it came into European hands; who made it; when and in what context, and what were its functions and spiritual value? In what colonial situation and conditions was the object acquired by European actors?

In the third set of criteria, the PPROCE report consists of three parts under the general heading of *research technical criteria*. The first part aims to give as many relevant details as possible about the *object and its location* – varying from registration number(s) to labels attached to it and the collector’s and/or curator’s marks. The second part concerns *source research* and is aimed at establishing and providing which information is present in and outside the museum registration systems; and what sources are present in the countries and regions of origin. The third part is about *cooperation with external experts* – in the Netherlands; in the countries of origin; and in international networks of object experts.

The fourth and final set, *reporting criteria*, explains which research steps have and have not been taken, and which parts of the provenance history are incomplete.

Discussion

The PPROCE methodology is clearly aimed at providing fuller and broader object biographies. It can already be seen from some case-studies that they can reveal insights that impact restitution. The research into the provenance of a battle flag in the RMA (inventory number NG-MC-1889-84-4) showed that it was not captured in the Dutch Indies at the end of the 18th century, but that – based on its colour and badge – the flag was “from the sultanate of Sulu in what is nowadays the Philippines” and “probably captured by a Dutch navy man somewhere in the nineteenth century”.⁵⁴

⁵² Ibidem, pp. 56-60.

⁵³ Ibidem, p. 56.

⁵⁴ C. Drieënhuizen, *Provenance Report regarding Flag (Vlag uit de voormalige Nederlandse koloniën)*, https://pure.knaw.nl/ws/portalfiles/portal/488925538/RAP_PPROCEprovenanceReport_37_Flag_NG_MC_1889_84_4_v10_202203.pdf [accessed: 01.06.2022].

However, two aspects are lacking. The first is that under the historically substantive criteria, the draft assessment framework contains scarcely any references to the historical legal frameworks of the empires, kingdoms, and other entities that were robbed of their cultural, historical, and religious treasures. The Kandyan kingdom in Ceylon had a vibrant legal system that was replaced by the colonizers.⁵⁵ The Kingdom of Benin in present-day Nigeria had its own elaborate legal system, and its laws were trampled upon by the British military in 1897, i.e. the year in which they took the Benin objects.⁵⁶ In comparison, during the Second World War the German occupiers of the Netherlands introduced many racist laws and therewith denied the value of existing Dutch laws. After the war, the Netherlands government declared these German laws “null and void”.⁵⁷ If a former colony were to declare “null and void” all oppressive laws enacted by the colonizers, what would that mean for their claims to treasures in the hands of former colonizers?

Secondly, what is easily ignored is the question who is to decide about whether an object from a colonial context is to be researched; and what and how should it be researched – i.e. should it be the current possessor in the Global North or the community or the country that most probably lost it in the Global South? Or should it be a collaboration between the two? Certainly, in the first phase of this provenance research into the cannon of the King of Kandy (2017-2019), the research plan did not excel in terms of pursuing equality between the former colonizers and the formerly colonized countries. The PPROCE report also does not seem to explicitly embrace the equality issue. The criteria ask, for instance, for publication of results “in a language that enables counter-expertise [...] from the countries of origin”.⁵⁸ This implies that experts from the Global North provide their expertise first, and that thereafter the countries of origin can come up with counter-expertise. In discussing *source research*, the compilers are advised to find out “which potential sources are present in countries and regions of origin”.⁵⁹ This is another indication that Dutch heritage institutions take the lead in this methodology, and that stakeholders in former colonies can join if and when invited.

Amongst the 50 case-studies in the PPROCE report, there are a number of objects about which there is fairly unanimous agreement that they were looted. The cannon of the King of Kandy and a diamond of the Sultan of Banjarmasin in Indonesia (inventory number NG-C-2000-3) – both of which are in the posses-

⁵⁵ *Legal Systems in Ancient Sri Lanka*, “Civil Engineering Lectures”, 7 April 2020, <https://civilengineeringlectures.com/legal-systems-in-ancient-sri-lanka/> [accessed: 10.05.2022].

⁵⁶ B. Fagbayibo, *Studying the Past in Present Tense: International Law in the Benin Empire*, “Politikon” 2021, Vol. 48(3), pp. 468-485.

⁵⁷ W. Veraart, *Two Rounds of Postwar Restitution and Dignity Restoration in the Netherlands and France*, “Law & Social Enquiry” 2016, Vol. 41(4), p. 960.

⁵⁸ J. Mooren, K. Stutje, F. van Vree, op. cit., p. 57.

⁵⁹ *Ibidem*, p. 59.

sion of the RMA – constitute two such cases. Unfortunately, the report does not proceed to ask whether the procedure for provenance research for such obviously looted objects, which qualify for restitution, should be shortened: fewer questions to be answered, so a decision can be made faster.

Provenance report of the cannon of the King of Kandy

The main authors, Alicia Schrikker and Doreen van den Boogaart, who were also responsible for reports about other disputable objects from the Kandyan kingdom, are to be praised for involving Sri Lankan and other external experts⁶⁰ into their research efforts, and thus for diminishing the traditional inequality between the Global North and the Global South. In its edition of 8 April 2022, the Sri Lankan newspaper *Daily Financial Times* describes the outcome as “a landmark research”, “an international joint provenance research which represented researchers from Sri Lanka, the UK, the US and the Netherlands”, and which sheds “new light” on “six Sri Lankan objects from the Rijksmuseum collection [that] were confirmed to be of Sri Lankan origin”.⁶¹

The report is rather extensive and answers four sets of questions: 1) When, how, and by whom was this cannon founded and decorated? 2) For whom was this cannon made? 3) Can this specific cannon be identified as the one recorded in the Dutch archival sources as part of the spoils of the Kandyan-Dutch war and attack of Kandy in 1765? And 4) Which meanings or provenances have been ascribed to the cannon from 1795 (in public collections) onwards and why?⁶²

During the presentation of the report and this case-study in Leiden on 17 March 2022, Alicia Schrikker did not hide either the effort or the joy of doing this type of research and discovering all sorts of new details. She also praised the cooperation with colleagues from Sri Lanka and other countries. The research effort has resulted in a wealth of, sometimes newly uncovered, information.

The report first presents a list of owners or locations where the cannon was held between 1745 and the present day, and then offers an extensive object analysis. Schrikker and Van den Boogaart write that “it was probably cast for the king of Kandy, either as a gift or made under the king’s orders, in the late seventeenth century in the Dutch Republic or Batavia”.⁶³ A chapter on the cannon as a spoil of war is followed by a description of its history in the Netherlands. One crucial finding of their research is that they were able to “dismiss the thesis” that one

⁶⁰ Asoka de Zoysa, Ganga Dissnayake, Ruth Brown, Kay Smith, and Arie Pappot.

⁶¹ R. Attygalle, *Solving the Mystery of Kandyan Artefacts*, “Daily FT”, 8 April 2022, <https://www.ft.lk/front-page/Solving-the-mystery-of-Kandyan-artefacts/44-733199> [accessed: 02.05.2022].

⁶² A. Schrikker, D. van den Boogaart, op. cit., p. 4.

⁶³ *Ibidem*, p. 34.

of Kandy's Great Officers, Lewke, had *gifted* the cannon to the Dutch Stadtholder in 1745. This was the position taken by the Dutch Foreign Ministry when it dealt with Sri Lanka's claim for the return of the cannon in the early 1980s – a position it had also held earlier, as will be shown below. The report stuck to the same conclusion as the RMA: the cannon is war booty.⁶⁴

Discussion

The case-study analyses the dynamics inside the Dutch government concerning the cannon. In December 1964, the Dutch Ambassador in Sri Lanka passed along a request from the Ministry of Foreign Affairs in Colombo for the restitution of the object, and the Ambassador encouraged his superiors in The Hague to do so. There was, however, strong opposition to this from the Dutch Ministry of Education, Arts and Science, and the request was rejected.⁶⁵ In 1972, again a Dutch Ambassador advised, at the suggestion of a Sri Lankan high official, giving the cannon back, and again the suggestion was rejected. And there was the contradiction between the RMA, which considered the cannon as war booty, and the Dutch government, which stuck to the idea it had been a gift.⁶⁶ But the case-study describes that the grounds on which this “gift” was made have remained fully unclear.⁶⁷ It found that the Dutch government thought the cannon should stay in the RMA, since it was a “national symbol” and of “national historical importance”.⁶⁸

The authors, however, do not explain why the RMA and the Dutch government so diametrically differed about the way of acquisition – war booty or gift? – and instead suggest a need for further research. In our view, the position of the Foreign Ministry can best be explained by pressure from other European partners not to give in to extensive claims by former colonies. To define the cannon as a gift diminished the pressure to return it.⁶⁹

In one respect this provenance report remains “amputated” – it begins in 2019 and ignores the earlier process of collaboration with counterparts in Sri Lanka. The authors must have taken note of an article in the weekly *De Groene Amsterdammer* in March 2020 or a TV documentary aired by the Dutch broadcasting company BNN/Vara on 16 April 2021 about tensions between the RMA and Sri Lankan experts in the first phase of the research effort. The tensions are also mentioned in the Dutch version of van Beurden's *Inconvenient Heritage*. Why did Sri Lankan

⁶⁴ Ibidem.

⁶⁵ Ibidem, Appendix 2 “A history of restitution requests 1964-1972”, pp. 1, 3.

⁶⁶ Ibidem, p. 5.

⁶⁷ Ibidem, p. 3.

⁶⁸ Ibidem, pp. 28, 33.

⁶⁹ J. van Beurden, *Treasures...*, p. 133.

scholars have to help researchers of the RMA to develop a research methodology and to uncover the provenance history of an object that the Dutch museum itself considered looted?⁷⁰

The PPROCE report remains vague in this respect and only notes that “[e]xperience has shown that it takes time and patience to create mutual trust and build good contacts”, and that “for local researchers it can be unclear what the aim of the Dutch research is and how it relates to possible restitution. There may be mistrust”.⁷¹ The frictions between the Dutch and Sri Lankan experts are not mentioned, although the report quotes someone like the Director General of Indonesia’s Ministry for Education and Culture, Hilmar Farid, who emphasized the need for “early and intensive involvement of Indonesian historians and policymakers, as a condition for a careful heritage and restitution policy”.⁷²

Sri Lanka’s Experience with the Cannon of Kandy

This section now outlines the significance of the cannon to Sri Lanka; the efforts to retrieve it; and subsequent interactions between representatives of both Sri Lanka and the Netherlands relating to its provenance and possible restitution.

Significance of the cannon to Sri Lanka

As a historical object, there is little doubt that the cannon would have been part of the royal collection of Ceylon. Although its creation had roots in several countries, it had a clear and outspoken function in Ceylon until it was looted. Even though the cannon has been lost to the nation for centuries, some historical memory appears to have been present, judging by the fact that the cannon was desired in order to be displayed at the independence square museum. For this purpose, Sri Lanka had to pay the Dutch government to be allowed to use the design to fashion the replica, which is known as the “Cannon of Leuke Disawa”.⁷³

In the earlier-mentioned Dutch TV documentary of 2021 on the cannon, some Sri Lankans were interviewed and gave their views as outlined below:

A citizen from the Kandy district remarked: “It was stolen. By force. It belongs to our Kings and our country. Our people also need to see these things”. Lakshman

⁷⁰ N. Mathijssen, *Een Westerse worsteling met goed bedoelingen*, “De Groene Amsterdammer”, 25 March 2020, <https://www.groene.nl/artikel/een-westerse-worsteling-met-goede-bedoelingen> [accessed: 03.05.2020]; E. Dijkstra, *Roofkunst – Aflevering 1: Het kanon van Kandy*, “BNN/Vara TV”, 16 April 2021, <https://www.bnnvara.nl/roofkunst/aflevering-1-het-kanon-van-kandy> [accessed: 03.05.2022]; J. van Beurden, *Ongemakkelijk erfgoed: Koloniale collecties en teruggave in de Lage Landen*, Walburg Pers, Zutphen 2021, pp. 53-57.

⁷¹ J. Mooren, K. Stutje, F. van Vree, op. cit., p. 41.

⁷² Ibidem, p. 11.

⁷³ K. Hettiarachchi, *Step in for a State-of-the-Art Lesson in History*, “Sunday Times”, 26 September 2010, https://www.sundaytimes.lk/100926/Plus/plus_14.html [accessed: 08.05.2022].

Illangakoon, a retired navy officer, said: "I am angry that it should be in the Netherlands for so long. When they realized it was not good to keep it there, they should have returned it". Channa Daswate, chairman of the Galle Heritage Foundation, stated: "The cannon, if returned, could become a very interesting story for the Sri Lankans. The Netherlands should return it, as it is more important here than for the Netherlands".

Sri Lanka's repeated requests for its return are another indication of the cannon's importance for the country.

Subsequent interactions between representatives of both Sri Lanka and the RMA relating to its provenance and possible restitution

Around 2019, at the end of the first phase, officials at the RMA began to interact with various categories of persons with a possible link/interest to the cannon, in order to complete RMA's research. On 12 March 2019, the then-Head of the History Department of the RMA requested, via email, a meeting with Kamardeen, stating that her aim was "to start a dialogue with Sri Lankan museum officials, historians and the Sri Lankan minister of Culture about the provenance of the cannon, the importance of the object as well as the future of this object".⁷⁴

Having received a positive reply, the very next email contained the following questions: "I would like to ask you if you know about the cannon yourself, did you research its history? And, would you perhaps be able to help looking for archival records and reading them with me at the archive in Colombo about the loot of the cannon?".⁷⁵ At the time, Kamardeen did not realize that it was the Dutch State, and not the RMA, that was the owner of the cannon, and so the RMA could not decide about its future. The questions raised by the official are only concerned with the provenance of the object, and not with its importance or its future. While this email should have rung alarm bells, the researcher, believing that such research would only be initiated if there was a possibility for restitution (since provenance is already researched and recorded and accepted), went ahead with the meeting, also providing the RMA official with archival information retrieved painstakingly from the department of National Archives.

At the physical interview itself, nothing was spoken about the restitution of the cannon and the entire tone of the interview indicated that the purpose of the research was to find out if Sri Lanka had any previously unseen/unknown records that established a claim to the object. Having answered this question in the negative, it seemed that the RMA was secure in the knowledge that

⁷⁴ Email communication between the then-Head of the History Department of the RMA and Kamardeen, dated 12 March 2019 (available on file with the authors).

⁷⁵ Ibidem.

if a claim for restitution was made, it could successfully counter by asking the Sri Lankan government to provide some documentation stating its ownership of the object, which it did not have.

Not only this particular researcher, but other researchers too who had met with the RMA official in the (mistaken) belief that restitution was on the cards, began to back away from future collaboration. One of them, from the University of Kelaniya, quite rightly indicated in his email communication that firstly, there had been no discussion between the RMA and the Colombo Museum about which objects could be repatriated, indicating a lack of consultation; and secondly a reference to a report by the Colombo Museum, which the RMA researchers ignored answering.⁷⁶ This communication highlights the fact that restitution was indicated in some way and also that the RMA representative had not gone through any government channels in contacting all these people, but had accessed every bit of information available in Sri Lanka and analysed it from all possible angles, without official sanction from a government institution in Sri Lanka.⁷⁷

This entire exercise highlights certain fundamental problems. The opening of doors to a Dutch museum official – who came without government sanction by Sri Lanka and accessed information that even local researchers find difficult to come by – reinforces the colonial mentality and subservience to the “white skin” complex. The subsequent denial by the RMA of any bad faith – it argues that its intention in this first phase was “to talk about the context in which restitution can be made possible” – is also concerning, as it is an indication of the then existing underestimation by the museum of the (dis)trust between partners in the Global South and the Global North. This particular RMA official was adamant that she had not misrepresented herself.⁷⁸ But given that the history and provenance of the object is well documented, any researcher in Sri Lanka should be forgiven for thinking that any future research would centre around the issue of restitution.

The fact that almost all Sri Lankan collaborators from Sri Lanka backed away from the project after their initial meetings, and from the reference to restitution in their initial email communications, indicates that they all felt the same way. It was not just a mistake made by one person. The purpose of the research was couched in ambiguous language for the precise reason that the willingness to collaborate would have been much less had the true purpose of the research been revealed. As mentioned before, this friction between the Sri Lankan scholars and

⁷⁶ Email communications of Prof. Asoka de Zoysa to the group of researchers invited to collaborate on the project, dated 28 May and 3 June 2019 (available on file with the authors).

⁷⁷ The Director of the National Museum in Colombo was informed about this only on 16 May 2019, as indicated by the email of the RMA representative dated 16 May 2019 (available on file with the authors).

⁷⁸ The then-Head of the History Department of the RMA, when asked for a reaction, has explicitly stated that she has always acted as an employee of the RMA; and that her acts were therefore constrained by the limitations and levels of freedom that the RMA had granted to her, as indicated by the email communication dated 31 May 2022 (available on file with the authors).

the RMA is glossed over, and only briefly mentioned in the main PPROCE report, while there is no word on it in the case-study, even though it has become part of the object's social biography and the two countries dealing with it, and greatly affects the equality issue.

Sri Lanka's efforts to retrieve its lost relics, such as the cannon

In 1978, UNESCO created the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP). This committee was set up for the express purpose of facilitating bilateral negotiations between the countries concerned about the return or restitution of cultural property and encouraging them to conclude agreements to that effect.⁷⁹ As mentioned previously, in 1975 the Director of National Museums in Sri Lanka, Hemasiri De Silva, inventoried Sri Lankan objects abroad. Based on this, Sri Lanka created history by submitting a *Statement [...] concerning the Restitution of Significant Cultural Objects from Sri Lanka* to the First Session of the ICPRCP in May 1980.⁸⁰

At the time, this was one of the first and largest formal restitution claims ever made, comparable with Nigeria's current claim for Benin objects. The approximately 300 claimed objects were in Great Britain, Germany, Switzerland, France, Austria, the United States, Belgium, and the Netherlands (which had around 20 of them). In 1983 the ICPRCP did not consider Sri Lanka's request, as it adjudged that the formal requirements were not met. In particular, the South Asian country did not submit evidence that bilateral negotiations had remained unsuccessful.⁸¹

But there have been significant bilateral contacts regarding this claim, at least between Sri Lanka and the Netherlands. Evidence to this effect is found in a letter of 13 March 1986 of the Dutch Ministry of Welfare, Public Health and Culture, stating "that there has been correspondence at bilateral level" between Ministries of Culture of Sri Lanka and the Netherlands on the requested objects, and that the Dutch Director General for Culture "intends to inform the Government of Sri Lanka that for the time being there can be no question of a transfer, but that I am prepared to keep open the possibilities for loaning and/or copying objects". Again in 2022, the Director of the National Museum of Sri Lanka requested the return of the cannon during the presentation of the PPROCE report.

⁷⁹ <https://en.unesco.org/fighttrafficking/icprcp> [accessed: 27.11.2022].

⁸⁰ ICPRCP, *Statement Presented by the Democratic Socialist Republic of Sri Lanka concerning the Restitution of Significant Cultural Objects from Sri Lanka*, April 1980, UN Doc. CC.79/CONF.206/COL.10.

⁸¹ *Ibidem*, para. 11.

Significance of the cannon to the Netherlands

The presentation of the cannon and other war booty objects from Ceylon in Room 1.5 of the RMA may understandably surprise those visitors who have knowledge of the violent colonial history of Ceylon. The way the museum has arranged them on the floor and on the wall of a brightly lit showcase is typical for how an *art museum* presents objects. It emphasizes their aesthetic value more than their journey to the Netherlands and the way they were acquired. The RMA website does however offer the latter information and brings the visitor into an *art and history museum*.⁸² For the museum, the Dutch government, and the public, the cannon and other booty provide evidence of a Dutch glorious past and the Dutch domination of Ceylon. Like so many other disputable objects in the Netherlands, they are a national symbol and of national historical importance. They are showpieces in the RMA, as the museum maintains that they are “war booty”.

Conclusions

The above analysis and reflections have raised several issues. Based on the research by Hemasiri De Silva, our own investigations, and other sources, the discussion has highlighted the history of the disappearance of cultural and historical treasures from Ceylon under three European occupying forces. While Great Britain is usually in the spotlight of the restitution debate, the discussion has shown that Portugal and the Netherlands also possess considerable colonial collections from these areas. While little is known about their presence in Portugal and it is difficult to find looted colonial items in Portuguese institutions, more sources are available about the Dutch occupation and Ceylonese objects in Dutch collections.

The discussion on the legal regime has offered insights into Sri Lanka’s traditional title to this type of so-called “war booty”. It has also questioned the fundamentally flawed propositions relating to questions of international, Euro-centric laws that have been taken for granted in the past centuries, and that have cemented themselves into unquestioned and absolute governing norms that dominate the legal framework surrounding this debate, leaving little room for alternative viewpoints.

Most importantly, the analysis and reflections have demonstrated that the debate surrounding colonial cultural property and the provenance research efforts connected to this debate cannot be one-sided if it is to be fruitful. It can only be approached under conditions of mutual trust and working on equal footing, and not from a standpoint of the superiority of Western museums and governments or from behind the shield of outdated and invalid legal justifications. Equality is of paramount importance when the future of such objects is to be decided upon.

⁸² <https://www.rijksmuseum.nl/nl/zoeken/objecten?q=Kanon+van+Kandy&p=1&ps=12&st=Objects&ii=0#/NG-NM-1015,0> [accessed: 02.12.2022].

As the case-study of the ceremonial cannon of the King of Kandy in the RMA has shown, the way provenance research is organized and implemented constitutes an indication of the extent to which the inequality between former colonizers and the colonized people has been (or in some cases has not been) reduced. Whereas there was much inequality at the start of RMA's provenance research effort (2017-2019), the authors of the case-study have tried to diminish this in the second phase (2019-2022). By then the project had become part of a larger effort to develop a provenance research methodology for Dutch heritage institutions. Identity, ownership, provenance, and restitution are complex issues that require a true collaborative effort if the original home States of these objects are not to be made to feel exploited all over again. As one of us once said: "It is not mine to ask; but yours to return".⁸³

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⁸³ N. Kamardeen, *Law vs. Justice...*

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