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Dealing with Collections from Colonial Contexts: Current Developments in Germany

Abstract: The debate on the return and restitution of cultural property is by no means a new one. In recent years, however, the debate – stimulated by French President Emmanuel Macron’s speech in 2017 – extended to include the question of how to deal with collections from colonial contexts. Whereas international law provides a legal framework for how to deal with war-time looting (the 1954 Hague Convention) and the present-day trafficking in cultural property (the 1970 UNESCO Convention), no such legal regime exists for cultural objects removed during colonial times. Nevertheless, as this article illustrates – with a focus on recent examples in Germany – current developments indicate a movement towards new political and ethical schemes on how to deal with collections from colonial contexts and, in a broader sense, how to come to terms with the colonial past. In Germany, this includes the return of cultural objects and human remains to Namibia as well as the transfer of ownership of all Benin Bronzes held by German institutions to Nigeria.

Keywords: return, restitution, colonialism, Germany, Benin Bronzes

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Introduction

Throughout the world, museum directors and curators are facing questions about what they hold; since when; and why. The current debate, however, is not new: already in the 1960s – when several African States gained independence – claims for return and restitution were brought forward in order to regain interpretive sovereignty over their own culture and identity after the formal end of colonialism. Nevertheless, little has happened in this regard over the past decades. The adoption of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“1970 UNESCO Convention”)¹ and the increasing awareness that illicitly-excavated archaeological objects as well as stolen and trafficked cultural property do neither belong in museums nor in private art collections, also sheds light on the ethnological collections in Western museums.²

However, based on the fundamental principle of non-retroactivity in international law, the 1970 UNESCO Convention had to focus on present-day trafficking in cultural property, not on cultural objects removed during colonial times. In the same vein, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict³ does not apply retroactively either and in addition is limited to armed conflicts between States.

A “plea for restitution” was launched by UNESCO’s Director-General Amadou-Mahtar M’Bow in 1978,⁴ and the same year a UNESCO Intergovernmental Committee on return and restitution was created in order to provide a forum for cases not falling under the legal umbrella of the 1970 UNESCO Convention.⁵ Despite the attempts by UNESCO to increase the importance of the Committee, the number of cases presented to the Committee remains low and States continue to be reluctant to submit cases of return and restitution to it. Some cases – such as the Parthenon Marbles – have remained unresolved for decades with the Committee.

¹ 14 November 1970, 823 UNTS 231.

² For more details on the functioning of the 1970 UNESCO Convention, European Union, and national laws protecting cultural heritage, see R. Peters, *Nationalism versus Internationalism: New Perspectives Beyond State Sovereignty and Territoriality in the Protection of Cultural Heritage*, in: A. Carstens, E. Varner (eds.), *Intersections in International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 364.

³ 14 May 1954, 249 UNTS 240.

⁴ A.-M. M’Bow, *A Plea for the Restitution of an Irreplaceable Cultural Heritage to Those Who Created It*, 1978, <https://unesdoc.unesco.org/ark:/48223/pf0000034683> [accessed: 12.11.2022].

⁵ UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP) was established by Resolution 20 C4 / 7.6 / 5 of the 20th session of the Conference General of UNESCO in 1978 as a permanent intergovernmental body. For more information, see <https://en.unesco.org/fightrafficking/icprcp> [accessed: 12.11.2022].

However, both the increasing awareness of fighting trafficking in cultural property as well as the debate on the restitution of Nazi-looted art – the latter of which led to the adoption of the Washington Principles in 1998⁶ and its impetus “to achieve just and fair solutions” – paved the way for a broader understanding of the field, i.e. not only in terms of legal but also ethical approaches. The adoption of the ICOM *Code of Ethics*⁷ in 1986, and its revision in 2004, also indicate a growing awareness of the responsibility of the international museums community.

Although French President Emmanuel Macron’s speech in Ouagadougou in 2017⁸ – wherein he pledged to return cultural objects from France back to African States within five years – was addressed to his own nation, it had an enormous impact on other nations, as well as the international museums community. At that time, the debate in Germany centred very much on the construction of the controversial Humboldt Forum and its concept of placing Berlin’s ethnological collections in the re-erected Prussian castle in the heart of Berlin.⁹ Macron’s speech, however, amplified the political voices in Germany reminding the country that it has a colonial past too, prior to the atrocities of the First and Second World Wars. Overcoming this “amnesia”, or the “gap in our memory”, became a political mandate for action.¹⁰

In 2018, the governing political parties in Germany for the very first time put in writing that there is no future without remembrance, and that “the basic democratic consensus in Germany includes coming to terms with the Nazi regime, the communist era, as well as Germany’s colonial history”.¹¹ Thus, Germany gradually understood that it has to confront its colonial past, including – but not limited to – the question of how to deal with collections from colonial contexts, not only in Berlin but throughout the country.

⁶ Washington Principles on Nazi-Confiscated Art, 3 December 1998, <https://www.kulturgutverluste.de/Webs/EN/Foundation/Basic-principles/Washington-Principles/Index.html> [accessed: 12.11.2022].

⁷ ICOM *Code of Ethics for Museums*, 2017, <https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf> [accessed: 12.11.2022].

⁸ Présidence de la République, *Emmanuel Macron’s Speech at the University of Ouagadougou*, 28 November 2017, <https://www.elysee.fr/en/emmanuel-macron/2017/11/28/emmanuel-macrons-speech-at-the-university-of-ouagadougou> [accessed: 12.11.2022].

⁹ T. Rogers, *Humboldt Forum in Berlin Finally Opens (Kind of)*, “The New York Times”, 17 December 2020.

¹⁰ M. Grütters, M. Müntefering, *Eine Lücke in unserem Gedächtnis*, “Frankfurter Allgemeine Zeitung”, 15 December 2018, <https://www.bundesregierung.de/breg-de/service/archiv/alt-inhalte/eine-luecke-in-unserem-gedaechtnis-1561942> [accessed: 12.11.2022].

¹¹ Coalition agreement of the political parties CDU/CSU and SPD, 12 March 2018, p. 167, <https://www.bundesregierung.de/breg-de/themen/koalitionsvertrag-zwischen-cdu-csu-und-spd-195906> [accessed: 12.11.2022] (available only in German).

Framework Principles for Dealing with Collections from Colonial Contexts

Against this background, and with an understanding of the need to make a political statement on how to deal with collections from colonial contexts, the German Federal Government, the federal States (*Länder*), and the German municipal organizations adopted the Framework Principles for Dealing with Collections from Colonial Contexts in March 2019.¹² The preamble states that: “A sincere, credible and sensitive approach [...] is a task for the whole of society. Such an approach should be based on dialogue in a spirit of partnership, understanding and reconciliation with the societies affected by colonialism”. On this basis, the Framework Principles identify six areas of activity: (1) transparency and documentation; (2) provenance research; (3) presentation and information; (4) return; (5) cultural exchange and international cooperation; and (6) science and research. The deliberately broad term “collections from colonial contexts” used in the Framework Principles encompasses both human remains and cultural objects in the broadest sense, i.e. ritual objects as well as everyday objects.

With regard to the question of return, the Framework Principles state that “identifying cultural objects from colonial contexts which were appropriated in a way which is no longer legally and/or ethically justifiable and enabling their return is a moral and ethical obligation and an important political task”.¹³ With reference to human remains, the Principles are very clear: “Human remains from colonial contexts are to be returned”.¹⁴ The Principles continue by stating that “in principle, return should only be made in agreement with the countries and societies of origin”.¹⁵ This means that there is no general “one-size-fits-all” approach, but that it depends on the circumstances of each individual case and the parties involved to determine whether a return is appropriate; and if so, to whom the object should be returned – to the country of origin (federal or regional government); to a particular community; or even to a private individual as the original owner.

In Germany, no legislation is needed in order to return objects from a public collection to the country or community of origin, since there is no principle of inalienability as is the case, for example, in France. Once the governing body of a museum, cultural institution, or university collection has taken the decision that a certain object or group of objects should be returned and thus deaccessioned from the respective collection, no further legal restrictions exist under German law. Only

¹² Framework Principles for Dealing with Collections from Colonial Contexts, 13 March 2019, <https://www.auswaertiges-amt.de/blob/2210152/b2731f8b59210c77c68177cdcd3d03de/190412-stm-m-sammlungsgut-kolonial-kontext-en-data.pdf> [accessed: 12.11.2022].

¹³ *Ibidem*, Principle 7.

¹⁴ *Ibidem*.

¹⁵ *Ibidem*, Principle 9.

budgetary requirements might have to be met, depending on the legal status of the respective institution. In praxis, museums and similar institutions should inform, well in advance, the respective regional (*Länder*) authorities as well as the federal level, especially the Federal Foreign Office, in order to make the return process as smooth and successful as possible.

In order to work out the framework of a possible agreement in a specific case, mutual exchanges between the respective partners are vital. In this regard, the Principles state that “the responsible handling of collections from colonial contexts depends on dialogue, exchange and cooperation with the countries and societies of origin as well as with their diaspora in Germany”.¹⁶ Of course, this is easier said than actually put into practice, but it is essential for a common understanding. This is because restitution is not a one-way street, but enables a joint and sustainable exchange as well as future cooperation. Such future cooperation might include joint museum and exhibition projects, digitization, scholarship and curatorial programs, as well as the development and strengthening of cultural infrastructures in the countries of origin.

Contact Point for Collections from Colonial Contexts in Germany

Based on the Framework Principles of March 2019, the establishment of a joint Contact Point for Collections from Colonial Contexts in Germany was decided upon on 16 October 2019.¹⁷ In August 2020, the newly-created Contact Point started its work in Berlin.¹⁸ The task of the Contact Point is to provide information and advice; primarily to individuals and institutions from States and societies of origin, but also in Germany. In addition, it is concerned with the establishment of networks as well as the collection, structuring, documentation, publication, and statistical evaluation of data and information on collections from colonial contexts in German institutions. The Contact Point is jointly funded by the German Federal government and the federal States (*Länder*).

Guidelines of the German Museums Association

On the part of museums, the German Museums Association presented the first version of its *Guidelines for the Care of Collections from Colonial Contexts* in May 2018. These guidelines provide an overview of the overall topic; undertake a categorization of objects from different colonial contexts; and provide concrete recommen-

¹⁶ Ibidem, Principle 11.

¹⁷ Concept on the Establishment and Organisation of a German Contact Point for Collections from Colonial Contexts, 16 October 2019, <https://www.auswaertiges-amt.de/blob/2262748/5450242f5fdd6b-343b32919aab9c11a6/191016-kol-kulturgueter-pdf-en-data.pdf> [accessed: 12.11.2022].

¹⁸ For more information, see <https://www.cp3c.org/> [accessed: 12.11.2022].

dations for dealing with collections from colonial contexts, including how to deal with the question of return and restitution. Based on workshops held in October 2018 with international experts, a revised and supplemented second version of the *Guidelines* was presented in mid-2019. A third – and for the time being final – version was published in February 2021.¹⁹ The publications of the German Museums Association offer German museums and other institutions a well-founded and practical working aid for dealing with collections from colonial contexts.

International Standards: the ICOM *Code of Ethics*

The *Code of Ethics* of the International Council of Museums (ICOM) also provides a universally recognized basis for how to deal with collections from colonial contexts, stating that “museums work in close collaboration with the communities from which their collections originate as well as those they serve”.²⁰ Thus, the ICOM *Code of Ethics* emphasizes the function of museums as trustees and social intermediaries. With its total of eight principles, the ICOM *Code of Ethics* forms a principle document that can be understood as a universal canon of basic values and ethical guidelines for the international museum community, even far beyond ICOM. Principle 6.2 of the *Code* reads as follows:

Museums should be prepared to initiate dialogue for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation.²¹

In essence, the ICOM *Code of Ethics* thus already provides a universal basis for dealing with collections from colonial contexts by focusing on dialogue based on scientific, professional, and humanitarian principles. The ICOM Ethics Committee (ETHCOM) – as one of ICOM’s standing committees – is tasked with overseeing compliance with the ICOM *Code of Ethics*; providing expertise to assist museums in all ethical matters; and making recommendations to ICOM’s Executive Board and Advisory Council with reference to the ICOM *Code of Ethics*. Museums may also contact the ICOM Ethics Committee in individual cases and on questions concerning the interpretation of the ICOM *Code of Ethics*. Currently, the *Code of Ethics* is under revision by the ICOM Ethics Committee in order to implement the new ICOM museum definition, adopted by the ICOM General Conference in Prague

¹⁹ German Museums Association, *Guidelines for German Museums: Care of Collections from Colonial Contexts*, 3rd ed., 2021, <https://www.museumsbund.de/wp-content/uploads/2021/03/mb-leitfaden-en-web.pdf> [accessed: 12.11.2022].

²⁰ ICOM *Code of Ethics*, Principle 6.

²¹ Ibidem, Principle 6.2.

in August 2022, as well as to take into account the recent developments with regard to climate change, decolonization, digitization, and other pressing issues of the international museums community.

Returns to Namibia – Human Remains, Witbooi’s Bible, and Bilateral Cooperation

The return of human remains and cultural objects plays an important role and makes a significant contribution in coming to terms with the colonial past, especially with regard to present-day Namibia, a former German colony from 1884 until 1915. Whereas the negotiations on a reconciliation agreement between Namibia and Germany with respect to the Nama and Herero genocide (1904-1908) were officially concluded in May 2021,²² ratification of the agreement is still pending. Irrespective of these political negotiations, several human remains have been returned to Namibia: in 2011, 2014, and in 2018 at a ceremony in Berlin and a follow-up ceremony in Namibia.

The 2018 ceremony was followed by the return of the so-called Witbooi’s Bible and his whip, a symbol of power. Hendrik Witbooi (1830-1905), a Namibian national hero, was captured by German colonial troops in 1893. His Bible and whip, an important symbol of his authority as Nama leader, were given to the Linden Museum in Stuttgart by a German colonial officer in 1902. In 2013, the Namibian government approached the region of Baden-Württemberg and officially requested the return of both objects. After lengthy negotiations with Namibia and the approval of the governing bodies of the Linden Museum, the state of Baden-Württemberg, and the city of Stuttgart, the return ceremony took place on 28 February 2019 in Gibeon, the Witbooi family’s home and home to many Nama tribes in Namibia. Hendrik Witbooi was “Kaptein” during the German colonial period in Namibia and one of the most important leaders at that time. He is now a national hero in Namibia, commemorated by numerous monuments, and with his image portrayed on the reverse of Namibia’s currency. The return of the Bible and whip by Theresia Bauer, the Minister of Culture of the state of Baden-Württemberg, was an event of national importance in Namibia, which was attended not only by the President of the Republic, Hage Geingob, but also met with great interest and sympathy among the Namibian people.²³ The return is to be the starting point for cooperation projects involving the museums, universities, and archives of both sides. The state

²² Federal Foreign Office, *Foreign Minister Maas on the Conclusion of Negotiations with Namibia*, 28 May 2021, <https://www.auswaertiges-amt.de/en/newsroom/news/-/2463598> [accessed: 12.11.2022].

²³ Baden-Württemberg, *Witbooi-Bibel und Peitsche an Namibia übergeben*, 28 February 2019, <https://www.baden-wuerttemberg.de/de/service/presse/pressemitteilung/pid/witbooi-bibel-und-peitsche-an-namibia-uebergeben/> [accessed: 12.11.2022].

of Baden-Württemberg has made €1.25 million available for the cooperation projects, and has created a digital copy and a replica of the Bible for Namibia as well as the Linden Museum in Stuttgart.

In the same vein, the Ethnological Museum in Berlin decided that 23 cultural objects are to remain permanently in Namibia, initially as a long-term loan but eventually as a return. The objects, selected by Namibian museum experts out of the Berlin museum's collection, are part of a research project called "Confronting Colonial Pasts, Envisioning Creative Futures", carried out in partnership with the Museums Association of Namibia; a project which also includes oral history. The objects encompass historical objects of everyday use, jewellery, tools, and items of fashion. The project is based on a model of collaborative provenance research between museum experts from Namibia and Berlin.²⁴

Returns to Nigeria – The Benin Bronzes and Bilateral Cooperation

Despite the fact that present-day Nigeria was a former British colony and not a German one, the Benin Bronzes are so emblematic and symbolic – not only for Nigeria but for the entire African continent – that their return became a significant political gesture (and not only) in Germany as well.

In July 2022, Nigeria and Germany signed a joint declaration on the return of Benin Bronzes and bilateral museum cooperation.²⁵ In signing this political declaration, the two countries paved the way for the legal transfer of ownership of all Benin Bronzes in German museums to Nigeria – in total about 1,100 objects. At the signing ceremony in Berlin, two bronzes were returned to Nigeria as a symbol for the start of the transfer of ownership between the German museums and the respective Nigerian authority – the National Commission for Museums and Monuments (NCMM), which is the umbrella body in charge of all national museums and heritages sites in Nigeria. The joint declaration includes not only the return of Benin Bronzes, but also an agreement that some will remain on display in German museums as long-term loans. Moreover, cooperation projects with regard to touring exhibitions, archaeological excavations, the establishment of storage facilities, and contributions to museum buildings in Benin City have been agreed upon.

²⁴ Staatliche Museen zu Berlin, *Ethnologisches Museum: Restitutions to Namibia and Tanzania*, 29 June 2022, <https://www.smb.museum/en/whats-new/detail/ethnologisches-museum-restitutions-to-namibia-and-tanzania/> [accessed: 12.11.2022].

²⁵ Joint Declaration on the Return of Benin Bronzes and Bilateral Museum Cooperation Between the Federal Republic of Germany and the Federal Republic of Nigeria, 1 July 2022, <https://www.auswaertiges-amt.de/blob/2540404/8a42afe8f5d79683391f8188ee9ee016/220701-benin-bronzen-polerkl-data.pdf> [accessed: 12.11.2022].

In total, around 1,100 Benin Bronzes are held by around 20 museums and university collections in Germany. The bronzes originate from the Kingdom of Benin (now Edo State, Nigeria), and in particular from the Royal Palace of the Oba (king) in Benin City, which was destroyed by British soldiers in 1897. After the looting and the destruction of the Royal Palace, the Benin Bronzes – which also include works made out of ivory and wood – were sold mainly through British dealers and became scattered around the world. Around 5,000-5,500 bronzes are estimated to be in museums and private collections worldwide; most of them in Western museums. After the pillage of 1897, only about 360 Benin Bronzes remained in present-day Nigeria (280 in Benin City and the rest in Lagos). An excellent overview is provided in the platform Digital Benin,²⁶ which was launched in November 2022.²⁷ This unique digital platform connects the images and digital documentation of the Benin Bronzes looted in 1897 to oral histories, object research, and the historical context. Moreover, it contains an Edo language catalogue of the Benin Bronzes, provenance names, a map of the Benin Kingdom, and museum collections worldwide – all in one platform. An international team of experts, coordinated by the museum MARKK in Hamburg, Germany,²⁸ managed to collect the data of 5,246 objects across 131 institutions in 20 countries, mainly in the Global North – from Seattle and Los Angeles to Jerusalem and St Petersburg.²⁹

Whereas some museums dismiss all claims – such as the British Museum, which with its 944 objects is the biggest possessor of Benin Bronzes by far worldwide – other institutions, such as the Jesus College at Cambridge³⁰ and the University of Aberdeen³¹ returned individual Benin Bronzes to Nigeria in 2021. In the same vein, the Smithsonian Institution has also approved the transfer of ownership of 29 Benin Bronzes to Nigeria's NCMM; some of which will be returned physically to Nigeria, and some of which will remain in Washington, DC on long-term loan.³²

²⁶ <https://digitalbenin.org/> [accessed: 12.11.2022].

²⁷ J. Spero, A. Adeoye, *The Benin Bronzes and the Road to Restitution*, "Financial Times", 4 November 2022.

²⁸ The museum MARKK Hamburg serves as the official seat of the project and is responsible for the project administration. The Ernst von Siemens Kunststiftung (Ernst von Siemens Art Foundation) funded the project with more than €1.5 million for the initial two years (2020-2022) and an extension for one more year (2023). See <https://digitalbenin.org/funding-and-host> [accessed: 12.11.2022].

²⁹ J. Spero, A. Adeoye, op. cit.

³⁰ N. Khomami, *Cambridge College to be First in UK to Return Looted Benin Bronze*, "The Guardian", 15 October 2021, <https://www.theguardian.com/education/2021/oct/15/cambridge-college-to-be-first-uk-return-looted-benin-bronze> [accessed: 12.11.2022].

³¹ *Benin Bronze: "Looted" Nigerian Sculpture Returned by University*, "BBC", 28 October 2021, <https://www.bbc.com/news/uk-scotland-north-east-orkney-shetland-59063449> [accessed: 12.11.2022].

³² K. Ables, *Smithsonian Gives Back 29 Benin Bronzes to Nigeria: "We Are Not Owners"*, "The Washington Post", 11 October 2022, <https://www.washingtonpost.com/arts-entertainment/2022/10/11/smithsonian-benin-bronzes-nigeria/> [accessed: 12.11.2022].

Conclusions and Future Prospects

The responsibility accompanying a policy of sensitive and transparent handling of collections – especially those from colonial contexts – is an important task with respect not only to the countries and societies of origin, but also to museum visitors and the general public. Information about when and under what circumstances objects entered a collection is becoming of increasing interest and importance, especially for young visitors. The object's narrative and provenance provide added value, especially in terms of modern storytelling and transparent new museum concepts.

In addition to establishing international cooperation, dialogue, and mutual exchanges, alternative solutions to return should be explored, such as short- and long-term loans, the creation of replicas, or the use of 3D digitization. The recently launched platform Digital Benin is an excellent example, since the project combines several of these aspects. International cooperation is not a one-way street. If it is done properly, all stakeholders involved can benefit and learn from each other, which is an important aspect in view of the overall interest in cultural participation and the protection of the cultural heritage of humankind. International cooperation can offer opportunities that enable a positive balancing of interests on all sides, in the sense of a win-win strategy.

Although the current debate is much focused on how to deal with collections from colonial contexts, and particularly on the issues of return and restitution, this is only one aspect of a much broader debate. The confrontation by society, researchers, and politicians with the colonial past cannot be left only to museums and archives. Rather, there is a need for an open and general public debate going beyond the question of how to deal with collections from colonial contexts. Returns are the beginning, not the end. Coming to terms with the colonial past confronts us quite fundamentally with the question of a new relationship with Africa and beyond, i.e. between the Global South and the Global North. It is about overcoming structural inequalities and previous patterns of thought and action that remain too often shaped by racist stereotypes and prejudices. It is about identifying new museum concepts and new partnerships, and ultimately about how we collectively take on the challenges of the 21st century.

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