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Jos van Beurden*

jos.vanbeurden@inter.nl.net
orcid.org/0000-0002-8809-3883
Free University Amsterdam
De Boelelaan 1105, 1081 HV Amsterdam
The Netherlands

Hard and Soft Law Measures for the Restitution of Colonial Cultural Collections – Country Report: The Netherlands

Abstract: This commentary offers an overview of the restitutions and claims processed in the Netherlands until recently, and the legal framework in which they took place. Although the focus is on restitutions to and claims from Indonesia, those to and from a number of other former colonial possessions occur as well. It thus looks at Dutch cultural heritage regulations and laws concerning colonial possessions. Next, the current situation is reviewed, with special attention paid to the *Dutch Heritage Act* of 2016 and the 2021 *Policy Vision on Collections from a Colonial Context*, and possible frictions between the two. In the final part, two comparisons are made. One is between how the Netherlands has been dealing with claims for Nazi-looted art works and with claims for items looted from colonial areas. The second comparison is between the current measures for dealing with colonial loot by the Netherlands and Belgium. For several years now, both countries have taken up more seriously the decolonization of state-owned collections from colonial contexts.

* **Jos van Beurden** is researcher of colonial collections and restitution, affiliated to the Free University Amsterdam, and author of *Treasures in Trusted Hands: Negotiating the Future of Colonial Cultural Objects* (Leiden 2017; nominated for NWO Boekman Dissertation Prize) and of *Inconvenient Heritage: Colonial Collections and Restitution in the Netherlands and Belgium* (Amsterdam 2022).

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However, the new policies of both countries have their limitations as well. For the Netherlands, the author concludes that this former major colonial power is in an intermediate phase in the process of developing new rules for dealing with objects and collections from colonial contexts.

Keywords: legal framework, restitution, colonial collections, the Netherlands, Nazi-looted art works

Between around 1600 and 1975, the Netherlands had almost 50 colonial possessions distributed over three continents, varying from (fortified) trade posts to fully administered colonies. Through the ages, most of these possessions were sold, given, or surrendered to other colonial powers.¹ Only Indonesia, Suriname, and the Caribbean islands remained in Dutch hands until their independence – in 1949 for Indonesia; in 1975 for Suriname; while the formal relation of the Caribbean islands with the Netherlands varied until 2010.² Cultural and historical objects, ancestral remains, and archives were taken from many of these possessions, often in a manner nowadays considered undesirable and disputable.

In terms of the process of developing new rules for dealing with objects and collections from colonial contexts, the Netherlands is in an intermediate phase. Until recently, it has been hard – given the limited number of returns and rejected claims – to successfully claim restitution of one’s lost cultural objects. Legally, two major reasons were the statute of limitations for ownership claims³ and the strong protection of a new possessor under Dutch law.⁴ Another legal hurdle is the non-retroactivity of international treaties that arrange for restitution of lost cultural objects to which the Netherlands has acceded.⁵ Consequently, dealing with claims has been induced more by non-legal than by legal means.

¹ Raad voor Cultuur, *Advies over de omgang met koloniale collecties*, Raad voor Cultuur, Den Haag 2020, pp. 127-128, <https://www.raadvoorcultuur.nl/documenten/adviezen/2020/10/07/advies-koloniale-collecties-en-erkenning-van-onrecht> [accessed: 12.05.2022].

² In 2010, the islands of Aruba, Curaçao, and Sint Maarten became independent territories within the Kingdom of the Netherlands, while the islands of Bonaire, Saba, and Sint Eustatius became special municipalities of the Netherlands. Minister van Binnenlandse Zaken en Koninkrijksrelaties, *De Toekomst van het Koninkrijk, brief aan de Voorzitter van de Tweede Kamer der Staten-Generaal*, 21 July 2011, Kamerstuk 32850, Nr. 2, <https://zoek.officielebekendmakingen.nl/kst-32850-2.html> [accessed: 23.05.2022].

³ There is a general limitation period of 20 years (*Burgerlijk Wetboek* [Dutch Civil Code], Book 3, Art. 306).

⁴ See e.g. Dutch Civil Code, Book 3, Art. 105.

⁵ Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 UNTS 240 and its Protocol (signed by the Netherlands on 14 May 1954); 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 (signed by the Netherlands on 17 July 2009).

This country report offers an overview of restitutions carried out until recently and the legal framework in which these took place. It then looks at Dutch cultural heritage regulations and laws concerning colonial possessions. Next, the current situation is reviewed, with special attention paid to the *Dutch Heritage Act* of 2016 and the 2021 *Policy Vision on Collections from a Colonial Context*. In the final part of the report, two comparisons are made. One is between how the Netherlands has been dealing with claims for Nazi-looted art works compared to claims for items looted from colonial areas. The second is between the current measures for dealing with colonial loot by the Netherlands and those applied by Belgium.

Restitutions So Far and the Fragmented Legal Framework

Restitution issues have particularly played a role between the Netherlands and its biggest former colony, Indonesia. After the formal transfer of sovereignty in 1949, it took the two countries a quarter of a century to agree on the handover of a limited number of objects. In the *Joint Recommendations by the Dutch and Indonesian Team of Experts, concerning Cultural Cooperation in the Field of Museums and Archives including Transfer of Objects* (hereinafter: *Joint Recommendations*)⁶ of 1975, they defined the handover explicitly as a “transfer”, and not as a “return”, as the word “return” could create the impression of having to give back objects because of the way they had been acquired.⁷ These “transfers” took place in 1977 and 1978. As shown elsewhere in this issue of SAACLR, Sri Lanka – a Dutch colonial possession from 1658 to 1796, after which the British took control of it – submitted, in vain, claims to the Netherlands in the early 1960s, 1980, and 2022.

Apart from the return by the National Museum of Ethnology in Leiden (currently part of the National Museum of World Cultures) of around 4,500 pre-Columbian fragments to the Dutch Antilles in 1985,⁸ there was a relative “restitution-silence” until the 2000s.⁹ In the first decade of the new century mostly ances-

⁶ Nationaal Archief, 2.05.330 Inventaris van het code-archief periode 1975-1984 van het Ministerie van Buitenlandse Zaken, (1937) 1975-1984 (2008), Inv. No. 10266. It was not the original but a copy of the type that I found in other archives as well.

⁷ Transferred were the ancient statue of Prajñaparamitra, part of the Lombok treasures, and equipment that had belonged to Prince Diponegoro. J. van Beurden, *Treasures in Trusted Hands: Negotiating the Future of Colonial Cultural Objects*, Sidestone Press, Leiden 2017, para. 7.4.

⁸ According to the registrar of the National Museum of World Cultures, the transfer of the archaeological material was the outcome of negotiations between the Dutch Ministry of Education, Culture and Science and the Archaeological and Anthropological Institute of the Netherlands Antilles in Willemstad, Curaçao. The museum’s archives have no formal documents of the transfer, only a catalogue note with the transport order to a ship’s agent.

⁹ The silence was broken briefly in 2006, when 45 paintings were returned to Suriname. J. van Beurden, *The Return of Cultural and Historical Treasures: The Case of the Netherlands*, KIT Publishers, Amsterdam 2012, p. 53. According to the Dutch Council for Culture, the number of artworks was 48, while it is uncertain how many of these were acquired in the colonial period. Raad voor Cultuur, *Advies...*, p. 44.

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tral remains from public collections were handed over.¹⁰ At the request of the New Zealand Museum Te Papa Tongarewa, the National Museum of Ethnology returned a tattooed Māori head on 9 November 2005. Ghana's request for the repatriation of the head of King Badu Bonsu II was granted by the Leiden University Medical Centre on 23 July 2009. The same Dutch institution returned the remains of five Aboriginals on 28 September 2009 to Australia. Two were handed over to their Aboriginal community of origin. The origin of the other three was to be investigated in the National Museum of Australia in Canberra.¹¹ Governmental approval for these transfers was given on an individual basis. This illustrates the then-existing fragmentation and lack of appropriate procedures for claims. The transfers were induced more by public pressure in the Netherlands, pressure from communities in the countries of origin, and the limited importance of the objects or remains for the Netherlands.

In the 2010s there were three rather remarkable transfers of colonial objects. In 2018, Indonesia and the Netherlands agreed upon the handover of over 1,500 objects that had belonged to the collection of the former Museum Nusantara in the city of Delft.¹² This transfer was not based on an Indonesian claim. The collection had become superfluous, its quality varying from some precious objects to many rather mediocre ones. Inasmuch as it was a *municipal* collection, the de-accession decision was made by the municipal council. Whereas the Delft museum had offered about ten times as many objects, Indonesia did not want more.¹³ The restitution that Indonesia dearly wanted concerned the *kris* (dagger) of the country's national hero, Prince Diponegoro, which transfer took place in the beginning of March 2020. The Dutch Minister for Education, Culture and Science, Ingrid van Engelshoven, defined it as "the fulfilment of international agreements", but considered "the handling of this case as special and separate" from a new policy for dealing with collections from colonial contexts that was being prepared in that same period.¹⁴ The international agreements she referred

¹⁰ J. van Beurden, *Inconvenient Heritage: Colonial Collections and Restitution in the Netherlands and Belgium*, Amsterdam University Press, Amsterdam 2022, pp. 67, 132, 213.

¹¹ Australian Government, *Indigenous Remains to be Returned from Netherlands*, 28 September 2009, <https://formerministers.dss.gov.au/14427/indigenous-remains-to-be-returned-from-netherlands/> [accessed: 27.09.2022].

¹² See, e.g., Gemeente Delft, *Voorgenomen besluit Gemeente Delft tot vervreemding van de collectie van voormalig museum Nusantara te Delft*, Staatscourant, nr. 61063, 11 November 2016, <https://zoek.officielebekendmakingen.nl/stcrt-2016-61063.pdf> [accessed: 27.09.2022].

¹³ Erfgoed Delft, *Herbestemmingsproject Museum Nusantara*, 14 June 2018, <https://nusantara-delft.weebly.com/> [accessed: 24.05.2022]; J. van Beurden, *Herplaatsing Collectie voormalig Museum Nusantara Delft*, Museum Prinsenhof Delft and Nationaal Museum van Wereldculturen, Delft–Leiden 2019, pp. 55, 69, <https://www.materialculture.nl/sites/default/files/2019-02/Herplaatsing%20Collectie%20voormalig%20Museum%20Nusantara%20Delft%202013%20%E2%80%93%202018.pdf> [accessed: 27.09.2022].

¹⁴ Ministerie van Onderwijs, Cultuur en Wetenschap, *Vreemding en overdracht van kris uit de Rijkscollectie*, 4 March 2020, ref. 22632935, <https://open.overheid.nl/repository/ronl-b41896e3-3665-4b07->

to were formulated in the *Joint Recommendations* mentioned above, in which the Netherlands and Indonesia agreed to transfer objects that are “directly associated with persons of great historical or cultural significance in Indonesia to Indonesia”.¹⁵ Early in 2021, the same Dutch Minister announced a new and comprehensive policy, which should bring the period of fragmentation to an end.¹⁶ Since the *kris* was part of the Dutch National Collection, it was necessary, according to the Dutch Heritage Act (to be discussed hereafter), for the Minister of Education, Culture and Science to state explicitly that the object had been alienated from the state-collection. On 25 April 2019, there was another case of repatriation of ancestral remains: a Māori and Moriori delegation came to Museum Vrolik of the University Medical Centre of the University of Amsterdam to repatriate a Māori tattooed head and remnants of eight Moriori to New Zealand. This repatriation needed only the formal approval of the hospital’s Board of Directors.¹⁷ It was the second Māori head from the Netherlands to have been returned. The Moriori live on the Chatham Islands and are close to the Māori.¹⁸ On 21 November 2022, the Netherlands returned to Malaysia some 5,000-year-old human remains, which Dutch archaeologists had acquired in 1934 when Malaysia was still a British colony. The remains were of less importance to the Netherlands than e.g. Java Man which Indonesia now claims, while Malaysia had asked for their repatriation.¹⁹

Dutch Laws on Colonial Possessions

Due to the long period of the Dutch expansion, the large number of colonial possessions, and the varying degree of control over them, it is impossible to list in the context of this country report all hard and soft law and incidental and generic measures issued by colonial administrators for protecting the cultural heritage in the various territories. One of the first measures – an order that prohibited looting – was taken in Ceylon (Sri Lanka) during the Kandyan-Dutch War (1764-1766), when the Dutch commander explicitly ordered his troops not to loot the palace, the main temple,

b72d-bc306ec9b66c/1/pdf/vervreemding-en-overdracht-van-kris-uit-de-rijkscollectie.pdf [accessed: 27.09.2022].

¹⁵ Nationaal Archief, 2.02.05.02 Inventaris van de archieven van de Raad van Ministers [Ministerraad], 1823-1996, Notulen van de vergaderingen van de Raad van Ministers (MR), 20 August 1976.

¹⁶ Ministerie van Onderwijs, Cultuur en Wetenschap, *Beleidsvisie collecties uit een koloniale context*, 29 January 2021, <https://www.rijksoverheid.nl/documenten/kamerstukken/2021/01/29/rapport-beleidsvisie-collecties-uit-een-koloniale-context> [accessed: 27.09.2022].

¹⁷ J. van Beurden, *Inconvenient Heritage...*, p. 135.

¹⁸ Museum Vrolik, *Menselijke resten Maori terug in Nieuw-Zeeland*, 25 April 2019, <https://www.museumvrolik.nl/bericht/menselijke-resten-maori-terug-in-nieuw-zeeland-2/> [accessed: 27.09.2022]. See also: J. van Beurden, *Inconvenient Heritage...*, p. 135.

¹⁹ Ministerie van Onderwijs, Cultuur en Wetenschap, *Voorgenomen besluit tot vervreemding van archeologische menselijke resten*, Staatscourant, nr. 31520, 21 November 2022, <https://zoek.officielebekendmakingen.nl/stcrt-2022-31520.html> [accessed: 19.12.2022].

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and the city of Kandy. His exhortations were in vain however, and looting did take place. Only a “gold and jewelled chest” which contained a tooth of the Buddha was given back on the spot.²⁰ While concrete measures to minimize looting were rare, on the whole during the centuries of the reign of the Dutch East India Company (VOC, 1602-1798) and the Dutch West India Company (WIC, 1621-1792), the collecting of religious, cultural, and historical treasures remained relatively limited, at least in comparison with the period thereafter, when a colonial administration took over control from the VOC and the WIC and much more loot was collected. Colonial administrators, the military, entrepreneurs, missionaries, scientists, and also adventurers played an important role in the dispossession practices. Over time it induced the colonial administration to develop a policy for the protection of the cultural heritage in the colony.

More well-known are the measures taken in the Dutch Indies. In 1778, the Batavian Society of Arts and Sciences was set up, and in the absence of actions taken by the Government it soon began to “function as a ‘watchdog’ to protect and preserve” the colony’s heritage.²¹ From 1840 onwards, the colonial administration issued laws which regulated, for example, permissions for non-Dutch Europeans for scientific trips and the export of antiquities (1840); listed the monuments that were to be protected (1844); established the obligation to report archaeological finds to the administration (1855) as well as the responsibility of the Batavian Society for objects and collections of the colonial administration (1858); and decentralized the responsibility for cultural heritage protection to regional administrators (1878). In the 20th century, these actions were followed by a law requiring registration of the 2,600 archaeological sites of the Indonesian archipelago (1923), and a law stipulating the registration of pre-Islamic antiquities in public and private collections (1931).²²

In general, one can conclude that Dutch heritage laws and regulations regarding colonial possessions mainly served the interests of the Dutch State versus other private parties – both Dutch as well as from other European countries – and did not serve the interests of the colonized empires and their peoples. They were Euro-centric and did not respect the existing legal frameworks in the different colonized possessions. In most of these possessions, kingdoms, sultanates, or other entities existed. They had their own customary laws, and these laws certainly did not allow for the forced alienation of cultural property.

²⁰ R. Raven-Hart, *The Dutch Wars in Kandy 1764-1766*, Government Publications Bureau, Colombo 1964.

²¹ W. Djojonegoro, *The Evolution of the National Museum*, in: R.S. Sitowati, J.M. Miksic (eds.), *Icons of Art. The Collections of the National Museum of Indonesia*, National Museum, Jakarta 2006, p. 53.

²² J. van Beurden, *Inconvenient Heritage...*, p. 124; T. Sudarmadi, *Between Colonial Legacies and Grassroots Movements. Exploring Cultural Heritage Practice in the Ngadha and Manggarai Region of Flores*, PhD thesis, Vrije Universiteit Amsterdam, 2014, p. 74.

Laws and Regulations in the Netherlands

Heritage Act of 2016

Apart from the principle of the protection of a bona fide possessor and the statute of limitations in Dutch law, as provided for in the Civil Code,²³ the most relevant law that impacts the dealing with collections from colonial contexts is the Heritage Act of 2016.²⁴ It combines the existing, fragmented legislation and regulations for conservation and management of cultural heritage in the Netherlands. Chapter 4 of the Act lists the grounds on which cultural objects belong to the Dutch National Collection and are therefore inalienable unless there is specific governmental approval for their alienation. According to Article 4.17.3, an object is considered to be part of this Collection if it “is of particular cultural-historical or scholarly significance and irreplaceable and indispensable as part of the Dutch cultural heritage”. The law places responsibility for the protection of cultural heritage with the heritage field itself: i.e. museums, curators, archaeologists, owners, and administrations. If a museum wants to dispose of an object, according to Article 4.17.1 it must make this known publicly. Parties that oppose the de-accessioning then have six weeks to object. During that period, the object(s) may not be disposed of. According to Article 4.18, if there are reasonable grounds for believing that an object should remain in the Dutch National Collection, national and municipal authorities and legal entities under public law must seek the advice of a committee of independent experts. This committee will evaluate whether the objects are of national interest, in which case they cannot simply be alienated/exported.

The Heritage Act contains no special provisions for collections from colonial contexts, let alone for colonial objects acquired in a disputable manner. These collections fall under the same regime as, for instance, objects created by 17th-century Dutch painters. That this can cause frictions was evident during the earlier-mentioned de-accessioning of objects from the collection of Museum Nusantara in Delft to Indonesia.²⁵ This municipal museum had been part of the Indische Instelling (Indian Institution), a training centre for Dutch men who were going to work in Dutch colonies. After the closure of the centre in 1962, the museum remained open until 1 January 2013, when it had to close its doors due to financial problems

²³ Dutch Civil Code, Book 3, Art. 105.1: “A person who possesses an asset at the time when the limitation period of the action for termination of the possession is completed, acquires that asset even if his possession was not in good faith”. Art. 105.2: “If a person has involuntarily lost possession before that time, but has recovered it after that time, provided that within one year of the loss of possession or pursuant to a legal action instituted within that year, he shall be declared as the possessor on the record in the previous paragraph time designated” (own translation).

²⁴ *Dutch Heritage Act 2016*, <https://english.cultureelerfgoed.nl/publications/publications/2016/01/01/heritage-act-2016#:~:text=The%202016%20Heritage%20Act,%2C%20archaeologists%2C%20owners%20and%20administrations> [accessed: 05.05.2022].

²⁵ I analysed the de-accessioning process of the Nusantara collection in J. van Beurden, *Herplaatsing...*

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and insufficient visitor numbers. As the owner, the Delft municipality, was in serious financial trouble, the museum was given one year to de-accession its collection of over 18,000, mostly Indonesian, objects. The quality of the collection varied from some modest masterpieces to good quality tourist art objects. The municipality and the museum had agreed that the collection would be returned to Indonesia, and in furtherance of this aim a verbal agreement between the city of Delft and the National Museum in Jakarta was concluded. In exchange for a large number of free-of-charge objects, the Indonesian museum would have to accept the collection in its totality and pay for all transportation and insurance costs.

The Heritage Act stipulates, however, that for all objects that may be of national interest the procedure set out above needs to be followed. These amounted to 3,196 objects that qualified as part of the Dutch National Collection. This move upset the cultural authorities in Jakarta, as it created the impression that the Dutch were allowed to select the better part of the collection without having to consult their Indonesian counterparts, while Indonesia had to be content with all leftovers. They therefore informed their Dutch counterparts that they rejected their offer. This dispute continued for quite some time, and finally the Indonesian authorities were willing to accept 1,564 objects under the condition that they could select them themselves from among the remaining pieces. By the end of 2019, these pieces departed for Jakarta.²⁶ This example illustrates that the regulations in place for the protection of the Dutch National Collection may well clash with restitution efforts.

Policy Vision on Collections from a Colonial Context

The most recent development in this field is the *Policy Vision on Collections from a Colonial Context* (hereinafter: *Policy Vision*), issued by the Minister for Education, Culture and Science and published in January 2021.²⁷ It constitutes her reaction to the *Advice on Colonial Collections and Recognition of Injustice* (hereinafter: *Advice*), written by the Dutch Council for Culture at the request of the Minister and published a few months earlier, in October 2020.²⁸ The *Advice* was a clear break with positions of the past. In a non-legally formulated nutshell, the advice was: “What has been stolen will have to go back, if the country of origin asks for it”.

In her *Policy Vision*, Minister van Engelshoven follows the analysis of how the Netherlands acquired many colonial collections and most suggestions of the Dutch Council for Culture. Colonialism was characterized by structural inequality, violence, exploitation, oppression, slavery, and racism. Some cultural objects were acquired by brutal robbery, given up, or even gifted as a token of friendship or

²⁶ Erfgoed Delft, op. cit.; J. van Beurden, *Inconvenient Heritage...*, Chapter 10.

²⁷ Ministerie van Onderwijs, Cultuur en Wetenschap, *Beleidsvisie...*, p. 2.

²⁸ Raad voor Cultuur, *Advies...*

loyalty towards the then-occupier. The Minister wants to deal with this sort of objects “carefully, in close cooperation with the country of origin, and generously”, with restoration of injustice as the starting point.²⁹ In anticipation of parliamentary approval of the new policy, the Minister asked Dutch embassies in former colonies in three continents to inventory questions about colonial collections in the Netherlands from these countries.

Three categories of objects

The *Policy Vision* distinguishes three categories of objects, and for each there is a separate legal regime:³⁰

- (1) cultural objects taken away involuntarily from a former Dutch colony (Indonesia, Suriname, and the Caribbean part of the Kingdom of the Netherlands):

These will be returned *unconditionally*, but “only if the country of origin also wishes this return”. The *unconditionality* addition makes the *Policy Vision* transcend the ban on bringing cultural objects outside the Netherlands without permission in Article 4.22 of the Heritage Act of 2016.³¹ Simultaneously the Minister will discuss with these countries “the importance of broad accessibility and sustainable management and preservation of cultural goods”. Note that the phrase “if the country of origin wishes so” has not been added. This is relevant, as more and more former colonies consider such a “discussion” as patronizing.

- (2) cultural goods with special significance for the country of origin:

These are government-owned objects for which the provenance cannot be determined or does not indicate involuntary loss of possession, but are of special cultural, historical, or religious importance to the country of origin. The decision to return such an object is *conditional*, as it “will require a balancing of interests”, such as its cultural interest “for the country of origin, the communities involved in the countries of origin and in the Netherlands”, its importance for the Dutch National Collection, and “the future storage conditions and the public accessibility”. The legal regime is here in line with the Dutch Heritage Act.

- (3) cultural objects from former colonies of other colonial powers, such as Sri Lanka, Nigeria, or the Democratic Republic of Congo (DR Congo):

In order to make allowances for the specific character of each case, the Minister will make “a broader decision” on requests for this category, whereby the rectification of injustice will be the starting point in the assessment,

²⁹ Ministerie van Onderwijs, Cultuur en Wetenschap, *Beleidsvisie...*, p. 2.

³⁰ *Ibidem*, p. 4.

³¹ *Ibidem*, p. 7. See also *Dutch Heritage Act 2016*.

despite the fact that “the injustice was not caused by the Netherlands, but the Netherlands, as current owner of the objects, is the only one in a position to rectify this injustice”. Here too the legal regime is in line with the Dutch Heritage Act. However, a critical remark is in order here, as in these colonies of other European powers, the Netherlands not infrequently contributed to the injustice, e.g. during its rule over Sri Lanka in the 1760s (see below), through acquiring objects of the Benin Kingdom captured by British soldiers in 1897, or through Dutch agents who appropriated objects in the Congo basin in the second half of the 19th century.

Ancestral remains are a special category. In dealing with claims for them, the principles and procedures with regard to the handling of return requests of colonial collections are valid as well, but “more elements can play a role in the respectful handling” of these and “the specific ethical aspects are beyond the scope of this opinion”. The Minister assures that she “will give these requests the highest priority” and in such cases return is “the starting point”. Colonial archives are not dealt with in the *Policy Vision*.³²

Handling of return requests

In order to ensure a careful handling of collections from a colonial context, an independent assessment advisory committee will be set up, comprised of authoritative experts who are independent of the owner, i.e. the Dutch State. The committee has to determine whether the provenance investigation is adequate and whether there has been an involuntary loss of possession.³³ A possible return has to be preceded by a request from the country of origin and the request for it must come from a State. The Minister argues that accepting requests from other parties could violate the concerned State’s sovereignty. The request has to be submitted through the appropriate diplomatic channels and will be facilitated by an international exchange of knowledge about the collections and preliminary research. The *Policy Vision* attaches great importance to the involvement of experts from the country of origin in the provenance research.³⁴

In the event of a request being honoured, the object will then be transferred to the requesting State. For the purpose of agreement and transparency of the procedure, consultations with this country will be held in parallel with the processing of the request, in which the Netherlands will emphasize the importance of broad accessibility and sustainable management and preservation of the cultural goods.³⁵

³² Ministerie van Onderwijs, Cultuur en Wetenschap, *Beleidsvisie...*, p. 6.

³³ *Ibidem*, p. 7.

³⁴ *Ibidem*, p. 6.

³⁵ *Ibidem*, p. 7.

The independent assessment advisory committee will determine to which of the three categories an object belongs and whether the provenance investigation is adequate. For the assessment of a request for return, the holder of the object is to conduct the provenance research into the object. This is in line with the responsibility of museums for conducting provenance research. The Minister will study the capacity of heritage institutions to do provenance research and, if need be, support it. A first major step on the part of heritage institutions is to make collection registrations available online.

The *Policy Vision* underscores three major efforts to improve provenance research methodologies. One is the Pilot Project Provenance Research on Objects of the Colonial Era (PPOCE), a joint initiative of the NIOD Institute for War, Holocaust and Genocide Studies, Rijksmuseum Amsterdam, and the National Museum of World Cultures. Their final report, including 50 case-studies, was published in March 2022.³⁶ The second effort is the publication *Traces of Slavery and Colonial History in the Art Collection* of the Cultural Heritage Agency of the Netherlands, in which it searches its own collection for traces of slavery and colonial history. It is based on studies of 25 objects by different authors.³⁷ The third effort is *Pressing Matter: Ownership, Value and the Question of Colonial Heritage in Museums*, which investigates the potentialities of colonial objects to support societal reconciliation with the colonial past and its after-effects and explains how to deal with conflicting claims by different stakeholders for these objects in museums. The project aims at involving experts from former colonies and will develop and test “new theoretical models of value and ownership” and “new forms of return that address but move beyond current approaches to heritage restitution”.³⁸

First steps

Due to a delay caused by a cabinet crisis on 15 January 2021, parliamentary elections on 17 March 2021, and the long wait for and creation of the new coalition government on 10 January 2022, parliamentary approval of the new *Policy Vision* has been postponed and has not yet occurred as of the time of finishing this article (December 2022). This does not mean however that no steps are being taken.

³⁶ J. Mooren, K. Stutje, F. van Vree, *Clues. Research into Provenance History and Significance of Cultural Objects and Collections Acquired in Colonial Situations*, Rijksmuseum Amsterdam, National Museum of World Cultures, Institute for War, Holocaust and Genocide Studies, Amsterdam 2022, https://divtprfbgbt2m.cloudfront.net/2022-03/Clues_Final_Report_PPOCE.pdf [accessed: 12.05.2022].

³⁷ H. Pennock, S. Vermaat, M. Windhausen (eds.), *Traces of Slavery and Colonial History in the Art Collection*, Cultural Heritage Agency of the Netherlands, Amersfoort 2020, <https://english.cultureelerfgoed.nl/publications/publications/2020/01/01/traces-of-slavery-and-colonial-history-in-the-art-collection-edition-2> [accessed: 19.05.2022].

³⁸ *Pressing Matter, Pressing Matter: Ownership, Value and the Question of Colonial Heritage in Museums*, <https://pressingmatter.nl/> [accessed: 08.06.2022].

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To begin with, Indonesia and Suriname have endorsed the Dutch *Policy Vision*. In April 2022, official delegations of the Surinamese Ministry of Education, Science and Culture and of the Dutch Ministry of Education, Culture and Science started conversations on the implementation of the new policy.³⁹

Indonesia has set up a “repatriation committee [...] tasked with researching and selecting objects important to the history of Indonesia in close cooperation with museums in the Netherlands”.⁴⁰ The Secretary of State, Gunay Uslu, who is in charge of this dossier in the new government, has informed the Parliament that she has adopted the *Policy Vision* of her predecessor and emphasizes the need to act both carefully and yet not too slowly.⁴¹ In September 2022, she visited her colleagues in Indonesia to discuss restitution issues and cooperation.⁴² The first outcome of this meeting has been the presentation by Indonesia to the Netherlands of a list of regalia and religious objects and a collection of fossils (amongst others the between 700,000 and 2,000,000 years old skull of Java Man), on 17 October 2022.⁴³ A Dutch Restitution Committee has been set up. It is expected to start its advisory work in the Autumn of 2022.⁴⁴

Although the Minister has no direct say about cultural objects not owned by the Dutch State – such as collections of municipalities, provinces, universities, as well as collections of missionary organizations or private possessors – she intends to discuss the issue with the municipalities and provinces with the aim of obtaining their alignment with the *Policy Vision*.

³⁹ Waterkant, *Gesprek met Nederlandse delegatie over teruggave koloniale kunstcollectie*, 20 April 2022, <https://www.waterkant.net/suriname/2022/04/20/gesprek-met-nederlandse-delegatie-over-teruggave-koloniale-kunstcollectie/> [accessed: 21.05.2022].

⁴⁰ Conversation with Hilmar Farid, Director General for Culture at the Ministry of Education and Culture of Indonesia, in Amsterdam on 7 July 2022. See also: P. Ardiyansyah, *Object Repatriation and Knowledge Co-Production for Indonesia's Cultural Artefacts*, 4 November 2021, <https://blogs.lse.ac.uk/seac/2021/11/04/object-repatriation-and-knowledge-co-production-for-indonesias-cultural-artefacts/> [accessed: 21.05.2022].

⁴¹ Ministerie van Onderwijs, Cultuur en Wetenschap, *Implementatie beleidsvisie collecties uit een koloniale context*, 15 July 2022, ref. 32912959, pp. 1, 3, <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/07/15/implementatie-beleidsvisie-collecties-uit-een-koloniale-context> [accessed: 27.09.2022].

⁴² Ministerie van Onderwijs, Cultuur en Wetenschap, *Staatssecretaris Uslu leidt culturele missie naar Indonesië*, 9 September 2022, <https://www.rijksoverheid.nl/regering/bewindspersonen/gunay-uslu/nieuws/2022/09/09/staatssecretaris-uslu-leidt-culturele-missie-naar-indonesie> [accessed: 27.09.2022].

⁴³ M. van Nuland, *Indonesië eist Java-mens en andere topstukken terug van Nederland*, “Trouw”, 18 October 2022, <https://www.trouw.nl/binnenland/indonesie-eist-java-mens-en-andere-topstukken-terug-van-nederland~be6860e9/> [accessed: 09.10.2022].

⁴⁴ Ministerie van Onderwijs, Cultuur en Wetenschap, *Lilian Gonçalves – Ho Kang You voorzitter commissie teruggave koloniale collecties*, 15 July 2022, <https://www.rijksoverheid.nl/regering/bewindspersonen/gunay-uslu/nieuws/2022/07/15/lilian-goncalves---ho-kang-you-voorzitter-commissie-teruggave-koloniale-collecties> [accessed: 27.09.2022].

Discussion

In order to discuss the new *Policy Vision* in a broader context, it will be compared with the way the Netherlands has been dealing with claims for Nazi-looted art works, and with a new approach on the part of the Belgian federal government.

Dealing with colonial loot and Nazi-looted art works in the Netherlands

Although dealings with claims for Nazi-looted art works and dealings with claims for colonial loot have long remained separated domains, nowadays the two are ever more often connected.⁴⁵ The main argument is that both periods are “moments of great historical injustice”, while the redress for each of these moments and possible returns are “increasingly seen as a moral obligation”.⁴⁶ In the Netherlands, these two types of objects are dealt with in a different way.

In 1944, the Dutch government in exile issued two Decrees, no. E 93 of 17 September 1944 and no. E 100 of 20 October 1944.⁴⁷ The first declared certain transactions made during the German occupation null and void if they were based on racist legislation listed in this decree. The second measure declared that a failure to intervene in certain transactions was presumed to be unreasonable if they had been performed under the direct or indirect coercion of the occupier. This however led to only scarce restitution of art works to the victims of the Nazi regime.⁴⁸ Instead, many works of art, which were brought back by the specialized Allied units that had searched places where the Nazis may have stored them, ended up in public museums and other institutions. It was only in the second half of the 1990s that the Dutch and other governments that had profited so much from these returns realized that the owners’ descendants of the art works had been seriously wronged. This change resulted in the 1998 Washington Principles on Nazi-Confiscated Art,⁴⁹ undersigned by the Netherlands, Germany, and other Western powers, and the setting up of national restitution committees. They were given an advisory function. Without these two changes, “claimants would most likely come up

⁴⁵ See, e.g., Raad voor Cultuur, *Advies...*, p. 67.

⁴⁶ J. van Beurden, *Inconvenient Heritage...*, pp. 207, 214-216.

⁴⁷ *Het Koninklijk Besluit bezettingsmaatregelen van den 17 sept. 1944* [The Royal Decree on Occupation Measures of 17 September 1944], *Staatscourant* no. E 93; *Besluit Herstel Rechtsverkeer van den 20 okt. 1944* [Decree on the Restoration of Legal Order of 20 October 1944], *Staatsblad* no. E 100.

⁴⁸ W. Veraart, *Two Rounds of Postwar Restitution and Dignity Restoration in the Netherlands and France*, “Law & Social Inquiry” 2016, Vol. 41(4), pp. 960-961; E. Campfens, *Bridging the Gap between Ethics and Law: The Dutch Framework for Nazi-Looted Art*, “Art, Antiquity & Law” 2020, Vol. 25(1), p. 8.

⁴⁹ 3 December 1998, <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/> [accessed: 09.06.2022].

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empty-handed if their cases were approached in strictly legal terms”.⁵⁰ From then on, the Washington Principles have ruled in dealings with claims for Nazi-looted art works in Dutch public collections. This has increased the chances of just and fair treatment of descendants of the former owners and also gave the Netherlands an enhanced reputation.

This state of affairs lasted until 2007. That year, the Restitution Committee adjusted its policy and began to take the interests of public museums and other institutions more into account. This led – both internationally and nationally – to protests and the Committee was blamed for “careless mistakes” and “lack of empathy”.⁵¹ While the Washington Principles had been developed to redress injustice and to serve the interests of the victims of the Nazi regime, looking for a balance between their interests and the interests of public institutions that had taken advantage of the government policies of the immediate post-war period was a violation of the Principles, and it has been noted that “museums were rewarded for having been able to acquire important artworks in a dubious manner”.⁵² In 2021, the Dutch Council for Culture advised the government to go back to the original plan and to “include an unambiguous assessment framework that, in accordance with the Washington Principles, so much may be aimed at restitution or the realization of alternative solutions” in the decisions of the Restitutions Committee.⁵³ In March 2021, the Dutch Minister accepted the suggestion. For a claim to be assigned, two questions have to be answered positively: Is it highly likely that the claimant is (heir of) the original owner of the cultural object?; and: Is it sufficiently plausible that the original owner lost possession of that cultural object involuntarily as a result of circumstances directly related to the Nazi regime?⁵⁴

In conclusion, three remarks need to be made. To begin with, the Dutch post-2021 assessment framework for Nazi-looted art has many parallels with the new policy for dealing with colonial collections. Admittedly, it is often harder to determine who the (heir of the) original owner of colonial loot is, but that does not affect the principle. In general, claims to Nazi-looted art works and to dubiously-acquired

⁵⁰ T.I. Oost, *From “Leader to Pariah”? On the Dutch Restitutions Committee and the Inclusion of the Public Interest in Assessing Nazi-Spoliated Art Claims*, “International Journal of Cultural Property” 2021, Vol. 28(1), pp. 55-85.

⁵¹ S. Boztas, *Jewish Family Complains about Committee that Rules on Nazi-looted Art*, “Dutch News”, 19 March 2020, <https://www.dutchnews.nl/news/2020/03/jewish-family-complains-about-committee-that-rules-on-nazi-looted-art/>, quoted in *ibidem*.

⁵² See, e.g., P. Russell, *Restitution of Nazi-Looted Art*, “Paradigm”, April 2022, p. 38.

⁵³ Raad voor Cultuur, *Striving for Justice*, 7 December 2020, p. 9, <https://www.raadvorcultuur.nl/documenten/adviezen/2020/12/07/striving-for-justice> [accessed: 23.05.2022].

⁵⁴ Minister van Onderwijs, Cultuur en Wetenschap, *Tegoeden Tweede Wereldoorlog, brief aan de Voorzitter van de Tweede Kamer der Staten-Generaal*, 12 March 2021, Kamerstuk 25839, Nr. 48, <https://zoek.officielebekendmakingen.nl/kst-25839-48.html> [accessed: 23.05.2022].

objects from colonial contexts both form a grey category, where positive law is at odds with ethical norms.⁵⁵

The second – and more problematic – remark concerns the relationship between the 1944 Decrees E 93 and E 100 and the regulations for dealing with cultural heritage transactions in colonial contexts. If the countries of origin that were victims of racist and oppressive Dutch colonial policies were to draft similar decrees and declare null and void all transactions based on Euro-centric legislation made in the period of colonial domination; and declare that a failure to intervene in certain transactions was presumed to be unreasonable if they had been performed under the direct or indirect coercion of the occupier; this would very seriously impact restitution negotiations. The former colonial powers do not consider this to be reminiscent of a double standard.

The third remark concerns the Washington Principles for dealing with Nazi loot – which the Netherlands accepted from the start – and the fact that it has never undertaken the creation of similar principles for dealing with colonial loot. Although the Washington Principles never resulted directly in restitutions, they “have, together with other non-binding instruments in this field, stressed the importance of alternative dispute resolution for resolving ownership issues”.⁵⁶ Is this perhaps what many former colonies need?

The Dutch and Belgian approaches

On 25 April 2022, the federal government of Belgium filed the draft Bill Recognizing the Alienability of Goods Linked to the Belgian State’s Colonial Past and Determining a Legal Framework for Their Restitution and Return.⁵⁷ On 23 May 2022, it was discussed in the Commission for Mobility, Government Enterprises and Federal Institutions.⁵⁸ As the content has been described in the country report in this issue of SAACLR, the following remarks point to some similarities and differences between the Belgian and the Dutch approaches.

Both countries favour restitution and recognize the injustice of colonialism. Belgium’s draft bill offers a general legislative framework for the restitution of colonial collections. This is new in Europe. The Netherlands’ policy vision provides

⁵⁵ E. Campfens, *Bridging the Gap...*, p. 1.

⁵⁶ E. Campfens, *Cross-Border Claims to Cultural Objects: Property or Heritage?*, Eleven, Den Haag 2021, p. 131.

⁵⁷ Belgische Kamer van volksvertegenwoordigers, *Wetsontwerp tot erkenning van de vervreemdbaarheid van goederen die verband houden met het koloniale verleden van de Belgische staat en tot vaststelling van een juridisch kader voor hun restitutie en teruggave*, 25 April 2022, <https://www.lachambre.be/FLWB/PDF/55/2646/55K2646001.pdf> [accessed: 08.06.2022].

⁵⁸ Belgische Kamer van volksvertegenwoordigers, *Wetsontwerp tot erkenning van de vervreemdbaarheid van goederen die verband houden met het koloniale verleden van de Belgische staat en tot vaststelling van een juridisch kader voor hun restitutie en teruggave. Verslag van de eerste lezing*, 23 May 2022, <https://www.dekamer.be/FLWB/PDF/55/2646/55K2646003.pdf> [accessed: 08.06.2022].

for a general framework, but not for a general law, and claims will be dealt with on a case-by-case basis. The Belgian bill lifts the inalienability of state-owned objects that are proven to have been robbed in former Belgian Africa: DR Congo, Rwanda, or Burundi. In February 2022, it handed over a catalogue with 84,000 objects (including sculptures, masks, utensils, and musical instruments) to DR Congo, which arrived in Belgium up to 1960 (DR Congo's year of independence).

Both countries favour close cooperation with the State of origin, but Belgium is seeking bilateral agreements in which procedures for restitution claims are defined, be it only with its three former colonial territories in Africa. Such agreements should provide for more equality. The Dutch policy vision contains provisions for all colonial territories from which it has collections.

Article 5 in the Belgian draft law stipulates the establishment of joint scientific committees composed of experts from the two States, each of whom is entitled to vote on the future of an object in question. Each bilateral agreement will determine under what conditions these committees will work. In the Dutch policy vision, an independent assessment advisory committee will determine whether the provenance investigation is adequate and whether there has been involuntary loss of possession, and this is mostly a Dutch affair. The same can be said about the ministerial plea for structural provenance research, although Dutch heritage institutions are encouraged to involve experts from the State of origin therein.

In Article 4, Belgium seeks guarantees from a recipient former colony that the returned objects are properly taken care of. The Netherlands has a dual approach in this matter. The Netherlands will return war booty to former colonies unconditionally, but in case of objects claimed by colonies of other European colonial powers it will consider the conditions in the State of origin related to preservation and accessibility.

Conclusions

In its dealings with claims for disputably-acquired objects from colonial contexts, the Netherlands – as was the case with all other former colonial powers – needed several decades to come to grips with the issue. This is comparable with the lengthy period that the Netherlands and other countries needed to come to terms with the descendants of victims of the Nazi regime about their claims.

In the process of developing new rules for dealing with this sort of collections, the Netherlands is in an intermediate phase. In the last few years it has made progress, which is comparable with developments in other European former colonial powers. But so far the number of restituted objects, as well as agreements with former colonial possessions about the future of disputable colonial collections, has remained small, while the new *Policy Vision* on collections from colonial contexts is still awaiting parliamentary approval. And although the Netherlands claims to respect other countries' sovereignty, the new policy has several elements that per-

petuate part of the inequality between former colonies and former colonizers, especially in relation to the capacity of former colonies to take good care of restituted objects.

In the Netherlands, claims to Nazi-looted art works and to dubiously-acquired objects from colonial contexts both form a grey category, where positive law is at odds with ethical norms. Until now, the country has been more open for claimants of Nazi-confiscated art works than for claimants of involuntarily-lost objects from former colonial possessions.

With its introduction of a proposed general legislative framework for the restitution of colonial collections, Belgium is setting an important precedent. The limitation of this framework is, however, that there are only three former colonial territories run by Belgium. This reminds one of the policy of unconditional returns of involuntarily lost objects to Dutch colonies. Arrangements for Belgian state-owned colonial collections coming from other colonial places – think here of the Indigenous peoples in North America or New Zealand – are absent.⁵⁹ In the Dutch *Policy Vision*, arrangements for dealing with claims from these other places have been taken into consideration. Both Belgium and the Netherlands are at the start of the process of decolonization of their public colonial collections. The outcome of this will only be seen after a few years, but it is already clear that this outcome will be greatly affected by the ability of both the former colonies and the former colonizers to work together on a more equal footing.

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⁵⁹ While the Netherlands has repatriated a state-owned Māori tattooed head to New Zealand, two of such heads in the Royal Museum of Art and History in Brussels that New Zealand has claimed since 2018, are still waiting for a federal decision. J. van Beurden, *Inconvenient Heritage...*, p. 136.

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