Legal aspects concerning the restitution of cultural property removed during colonial occupation

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1. *Introduction*

On 18 December 1973, the UN General Assembly adopted Resolution 3187 on the prompt restitution of cultural property, establishing 'special obligations of those countries which had access to such valuable objects only as result of colonial or foreign occupation'.[1] Nevertheless, the legal aspects concerning the restitution of cultural property removed during the colonial era remain complex and controversial. Indeed, the return of cultural property raises legal, ethical and political issues that require an accurate assessment of historical facts and legal principles, which are not necessarily shared by the countries involved.

The aim of this article is to analyse the relevant international norms and the practice followed by States in dealing with this issue. Necessarily, before carrying out this analysis, it is appropriate to specify what is meant by 'cultural property'. Since there is no uniform legal notion of this term in international law, for the purposes of this paper, reference will be made to the broad notion included in Article 1 of the 1970 UNESCO

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[1] 'Restitutions of works of art to countries victims of expropriation' UN Doc A/RES/3187(XXVIII) (18 December 1973) para 2. See also A-M M'Bow (UNESCO Director-General) *A Plea for the Return of an Irreplaceable Cultural Heritage to Those Who Created It* (7 June 1978).

Convention on the Restitution of Stolen Cultural Property,[2] on the basis that claims for restitution from former colonies cover the cultural objects mentioned therein, although the application of this treaty to cultural property which has been removed during colonial times, as will be scrutinised below, is limited.

2. *The inadequacy of the international legal framework*

From a historical point of view, the practice of the restitution of cultural artefacts among States emerged at the beginning of the 19th century, during the Congress of Vienna in 1815, with the signature of the second *Treaty of Paris,* which provided for the restitution of plundered artefacts to their former sovereigns after Napoleon's defeat.[3] Following that precedent, in 1874, 15 European powers sought to prohibit the looting and confiscation of works of art during war through the *Project of an International Declaration concerning the Laws and Customs of War*.[4] A similar principle was established in the 1880 *Oxford Manual on the Law*

[2] Art 1 UNESCO Convention: 'For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories: (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest; (b) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance; (c) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; (d) Elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) Antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; (f) Objects of ethnological interest; (g) Property of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material; (h) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; (i) Postage, revenue and similar stamps, singly or in collections; (j) Archives, including sound, photographic and cinematographic archives; (k) Articles of furniture more than one hundred years old and old musical instruments'.

[3] Second Treaty of Paris, 20 November 1815.

[4] Project of an International Declaration concerning the Laws and Customs of War, Brussels (27 August 1874) art 8.

of War on Land,[5] which would serve as a guide for troops on the battlefield. Although not strictly binding, these instruments indicated the crystallisation of a custom regarding the protection of cultural property in wartime and its restitution after war.[6] This development continued until its final codification through the 1899 *Hague Convention (II) with Respect to the Laws and Customs of War on Land* and its annexed Regulations, which prescribed that 'all seizure of [...] works of art or science is prohibited and must be the subject of proceedings'[7] and with the 1907 *Hague Convention (IV) respecting the Laws and Customs of War on Land* and its annexed Regulations prohibiting pillage.[8]

Unfortunately, these rules were not universal. They were only applicable among contracting States, stopping at the borders of Europe, the 'civilised world', and did not apply to territories which were or were to be colonised. Indeed, the colonised territories were regarded by Western powers as 'barbaric' or 'uncivilised' and therefore not as States at all; hence, the conflicts among their armies and the colonial peoples and communities were not legally qualified as wars.[9]

After the Second World War, while the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* confirmed the duty of the contracting States to take all possible measures to prevent the theft, robbery, looting or misappropriation of cultural property during international armed conflicts, its *First Protocol* established three core principles: a) the prohibition of all exports from the occupied territory and the requirement of their return to the territory of the State from which the property was exported; b) the prohibition of the retention of cultural property by which, when the occupation ends, the State must return the cultural object to the formerly occupied authorities; and c) the prohibition of sale of the cultural property, according which the

[5] See International Law Institute, The Laws of War on Land (Oxford 9 September 1880) art 53.

[6] Y Zhang, 'The Right to Restitution of Cultural Property Removed as Spoils of War during the Nineteenth-Century International Warfare' (2021) 42 U Pennsylvania J Intl L 1097, 1139.

[7] See rule 56 of the 1899 Hague Regulations.

[8] See rules 28 and 47 of the 1907 Hague Regulations.

[9] An example is art 35 of the 1947 Paris Peace Treaty between Allied and Associated Powers and Italy, which obliged the Italian State to return cultural properties to Ethiopia (a sovereign State illegally occupied in 1935), but it did not prescribe a similar obligation for the benefit of Eritrea, Somalia and Libya, the other former Italian colonies.

purchaser is entitled to fair compensation by the occupying power if the cultural property is sold. Nevertheless, this legal instrument is not retroactive and therefore cannot be applied to situations concerning colonial conquests prior to the date of its entry into force, even if these were to be assimilated according to a pacific or belligerent occupation on the basis of international law at the time.

Since the 1960s and the decolonization process, the former colonies have been fully subject to the international legal order as 'newly independent States' and have notably demanded that restitution principles similar to those put in place during armed conflicts be applied to them. However, the two conventions which attempted to respond to the global problem of the despoilation of cultural property, the 1970 *UNESCO Convention on the Restitution of Stolen Cultural Property* and the 1995 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Property*, have limited applicability.

The 1970 UNESCO Convention lays down rules for the return of stolen cultural property. It emphasises the importance of international cooperation for the return of cultural property to its legitimate countries of origin and provides measures to prevent the illicit trade in such goods. This convention is the first international legal instrument to safeguard cultural goods and heritage in peacetime. However, its scope is limited to theft, clandestine excavations and illicit exports,[10] and does not explicitly mention cultural property acquired in colonial contexts.[11] Another important characteristic of the convention is its non-retroactivity, which

[10] According to art 11, illicit involves 'the export and transfer of ownership of cultural property under duress arising directly or indirectly from the occupation of a country by a foreign power'. Furthermore, art 12 requires contracting States to 'take all appropriate measures to prohibit and prevent the unlawful import, export and transfer of ownership of cultural property' in 'territories for which they are responsible for international relations'.

[11] However, it appears from the *travaux préparatoires* of the Convention that the colonies are mentioned as territories represented by another State in international relations under art 12. Indeed, this provision states: 'The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories'. See UNESCO, 'Means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property. Preliminary report prepared in compliance with Article 10.1 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Convention' doc SHC/MD/3 (8 August 1969) para 67 and Annex at 4.

prevents its applicability to cultural property removed during the colonial era, although, Article 15 allows States Parties to conclude special bilateral agreements with each other for the return of cultural property that was removed from its territory of origin before the convention entered into force. Proposals to extend the applicability of this convention to important cultural property that is inalienable and inseparable from the cultural and civil history of the State or territory of origin were rejected, as the *travaux préparatoires* show.[12]

Likewise, the 1995 UNIDROIT Convention does not deal directly with colonial expropriation, merely regulating theft and illegal export, and is not retroactive, but its Article 10(3) states that non-retroactivity does not legitimise any illegal transaction that occurred before the Convention entered into force, nor does it limit any right of a State or other person to make a claim under remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before its entry into force. According to Article 5(3),

> 'The court or other competent authority of the State addressed shall order the return of an illegally exported cultural object if the requesting State establishes that the removal of the object from its territory significantly impairs one or more of the following interests: (a) the physical preservation of the object or of its context; (b) the integrity of a complex object; (c) the preservation of information of, for example, a scientific or historical character; (d) the traditional or ritual use of the object by a tribal or indigenous community, or establishes that the object is of significant cultural importance for the requesting State'.

Consequently, the scope of this provision could cover repatriation requests of cultural goods illegally exported from the territory of former colonies.

To summarise, all these international treaties have a limited scope because they only apply to situations concerning stolen or illegally exported cultural property, they cannot be enforced retroactively and their effective application may depend on the consensus of and cooperation among the countries involved. Therefore, the likelihood of restitution of cultural

[12] UNESCO, 'Means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property' doc SHC/MD/5 (27 February 1970) Annex II at 10.

property removed in colonial contexts within these convention frameworks is very limited.

Nevertheless, some scholars have pointed out that other principles of international law can inform issues of restitution of cultural property removed during colonial times, such as the principle of cultural self-determination.[13]

3. *The Principle of cultural self-determination*

The principle of cultural self-determination affirms the right of communities and peoples to preserve, develop and manage their cultural heritage. In the context of the restitution of cultural property removed in colonial times, the principle of cultural self-determination can be invoked to support claims for the restoration of the fundamental access of peoples to their cultural heritage in order to preserve and develop it. In addition, such restitution of removed cultural property would be an act of historical justice, driven by a moral obligation, as a step towards correcting historical imbalances and redressing the injustices suffered by colonial peoples.[14]

In this context, the Dutch-Indonesian agreement signed in 1975 for the 'return' by the Netherlands to Indonesia of objects 'directly related to persons of great historical and cultural importance or to crucial historical events' can be seen as a successful example of the application of this principle.[15]

[13] AF Vrdoljak, 'International Law, Museums and the Return of Cultural Objects' in LV Prott, *Witnesses to history: a compendium of documents and writings on the return of cultural objects* (2009) 193 <https://unesdoc.unesco.org/ark:/48223/pf0000185386>.

[14] UNGA Res 3187 (XXVIII) stated that the restitution of cultural property taken from former colonies or occupied territories was a necessary element for the cultural development of the new States and 'a just reparation for the damage suffered'. See also R Peters, 'Remedying historical injustice: Ethical and historical considerations in returning cultural materials' in S Borelli, F Lenzerini (eds), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law* (Martinus Nijhoff Publishers 2012) 141-158.

[15] See 'Joint Recommendations by the Dutch and Indonesian Team of Experts, concerning Cultural Cooperation in the Field of Museums and Archives including Transfer of Objects' of 1975. However, the two countries defined this as a 'transfer' and not a 'return', as the word 'return' could create the impression of having to give back objects because of the way they had been acquired. For more details on this situation, see K

Furthermore, a wider application of the principle of cultural self-determination seems to be that of the 1983 *Vienna Convention on Succession of States in Respect of State Property, Archives and Debts*. In its Article 15, it establishes that 'movable property which belonged to the territory to which the succession of States relates and which has become state property of the predecessor State during the period of dependence shall pass to the successor State' (let. e), and that 'movable property of the predecessor State [...] to the creation of which the dependent territory contributed, shall pass to the successor State in proportion to the contribution of the dependent territory' (let. f). Finally, according to Article 28(4), the predecessor State must cooperate with the successor state in the recovery of lost property from the dependent territory of origin to which the latter has succeeded. These provisions on state succession may be a viable alternative for determining claims for restitution or repatriation. However, it is worth noting that the Convention has only been ratified by 7 States.

Another important international instrument invoking the principle of cultural self-determination is the 2007 *UN Declaration on the Rights of Indigenous Peoples*, which recognises the rights of indigenous peoples to the preservation and protection of their cultural heritage and emphasises the importance of the return of removed cultural property[16] and the repatriation of ceremonial objects and human remains.[17]

Lastly, the principle of cultural self-determination has also been highlighted by Italian case law, in relation to the restitution to Libya of the statue called Venus of Cyrene removed in colonial period, in compliance with the contested Joint Declaration of 4 July 1998 and the agreements of 11-13 December 2000 signed by the two countries concerned. According to the Italian *Consiglio di Stato*, in the context of the evolution of

Stutje, 'The History of the Indonesian Dutch Restitution Debate (30 March 2022) available at <https://pure.knaw.nl/portal/files/511356690/ART_Stutje_HistoryOfTheIndonesianDutchRestitutionDebate_v11_20220330.pdf>; J van Beurden, 'Hard and Soft Law Measures for the Restitution of Colonial Cultural Collections – Country Report: The Netherlands' (2022) 2 Santander Art and Culture L Rev 407.

[16] See art 11(2) UN Declaration.

[17] See art 12(2) UN Declaration. For more details on the return of removed cultural property to the indigenous peoples, see M Monteiro de Matos, 'Cultural Identity and Self-Determination as Key Concepts in Concurring Legal Frameworks for the International Protection of the Rights of Indigenous Peoples', in E Lagrange et al (eds), *Cultural Heritage and International Law* (Springer Nature 2018) 273.

general international law, resulting from the contribution provided by the newly independent States (once former colonies), 'self-determination also includes the identity and historical and cultural heritage associated with the territory of each sovereign state or, in any case, belonging to a population subject to foreign government; it follows that the protection of this cultural-territorial identity entails, at the expense of those who violate it, even with a previous use of force that can be traced back to colonial domination or warlike events dating back in time, an obligation to return the cultural assets in which the violated ideal identity content materialises'.[18] Thus, according to the Italian judges, the contested Italian-Libyan agreements of 1998 and 2000 were to be considered merely as the means of implementing an obligation of restitution that was in any case already operative by virtue of general international law.

Nevertheless, the principle of cultural self-determination does not seem to receive wide recognition by the members of the international community as a customary norm.

In light of the above, only the traditional means of peaceful settlement of disputes among States seem to be useful tools for seeking the restitution of cultural property removed in colonial times by the former colonial territories and communities.

4. *Some remarks on the available means of dispute settlement*

One of the means of peaceful settlement of disputes is negotiation. The countries involved in a case of restitution could engage in direct negotiations and this could involve discussions based on historical evidence, the legitimacy of the claims and the conditions for restitution. Bilateral negotiations may lead to bilateral agreements on the return of cultural property or to alternative solutions, such as long-term loans or collection sharing. However, direct restitution through bilateral agreements or other international instruments is rare.

[18] Consiglio Stato (Sez VI) Judgment No 3154 (23 June 2008) *Associazione nazionale Italia Nostra — ONLUS* c *Ministero per i beni e le attività culturali e Repubblica della Libia (Ambasciata della Repubblica di Libia)*. For a commentary, see T Scovazzi, 'La restituzione dell'obelisco di Axum e della Venere di Cirene' (2009) XLV Rivista di diritto internazionale privato e processuale 555.

Among the most recent examples, one can mention some specific clauses of the 2008 Italian-Libyan friendship treaty concerning the return to Libya of manuscripts and archaeological finds transferred to Italy from those territories during colonial times,[19] the reconciliation agreement between Namibia and Germany with respect to the Nama and Herero genocide (1904-1908) concluded in May 2021,[20] and the joint declaration between Germany and Nigeria on the return of Benin Bronzes and bilateral museum cooperation signed in July 2022.[21]

Additionally, international mediation could be a means of dispute settlement. Indeed, international organisations or specialised institutions in the field of cultural heritage could mediate between the parties involved in a dispute, facilitating constructive dialogue and aiding in the resolution of the disputes concerning cultural property.[22] The role of the International Council of Museums (ICOM) and UNESCO's Intergovernmental Committee for the Promotion of the Restitution of Cultural Property (ICPRCP)[23] is noteworthy in this respect.

[19] Trattato di amicizia, partenariato e cooperazione tra la Repubblica italiana e la Grande Giamahiria araba libica popolare socialista (Bengasi, 30 August 2008) art 10, lett e): 'La restituzione alla Libia di manoscritti e reperti archeologici trasferiti in Italia da quei territori in epoca coloniale: il Comitato Misto di cui all'articolo 16 del presente Trattato individua i reperti e i manoscritti che saranno, successivamente, oggetto di un atto normativo ad hoc finalizzato alla loro restituzione'.

[20] 'Joint Declaration of Government of the Federal Republic of Germany and the Government of the Republic of Namibia 'United in Remembrance of our colonial past, united in our will to reconcile, united in our vision of the future' available at <www.dngev.de/images/stories/Startseite/joint-declaration_2021-05.pdf>. For a commentary, see R Marconi, 'Il passato (coloniale) che non passa: la Dichiarazione congiunta di riconciliazione fra Germania e Namibia del 2021' (2022) 16 Diritti umani e diritto internazionale 400.

[21] '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) available at <www.auswaertiges-amt.de/blob/2540404/8a42afe8f5d79683391f8188ee9ee016/220701-benin-bronzen-polerkl-data.pdf>.

[22] One example concerns the mediation suggested by an English judge, in 2007, in a case concerning the return of the human remains of 13 Aboriginal people by the British Natural History Museum to an Aboriginal community in Tasmania; see M Bailey, 'Natural History Museum Returns Aboriginal Remains' (2007) 8 The Art Newspaper 1.

[23] ICPRCP was established by Resolution 20 C4/7.6 /5 of the 20th session of the Conference General of UNESCO in 1978.

Similarly, arbitration is an alternative method used, albeit rarely, in disputes over cultural property.[24]

More frequently, disputes can be brought before national tribunals. Third States or rightful owners may take legal action to enforce their claims for restitution, based on national laws or relevant international conventions. However, legal actions can be complex and require solid evidence and an accurate assessment of the applicable law.

In all these situations, the nature of the property involved, the unlawfulness of the apportionment of cultural property and the ownership connection of a cultural property with a country of origin are complex problems to manage. This implies that very often the methods of restitution turn out to be more concerned with practicalities than with legal issues.

5. *Disputed cultural property and national initiatives concerning their restitution*

The absence of clear and precise international rules dictating the restitution of cultural property removed in colonial times highlights the existence of a series of elements, the definition of which is necessarily preliminary to any act of restitution.

Aside from where claims of cultural property removed in colonial times involve different interpretations of history and law by the countries concerned, leading to disputes and controversies over the legitimacy of the claims and the possibility of restitution (eg the issue of the restitution of the Parthenon marbles); the claims of cultural property removed in colonial times are often complex for several other reasons:

– Uncertain provenance of cultural artefacts and goods: during the colonial period, many cultural goods were removed from their places of origin and dispersed to different parts of the world and this can make it difficult to establish the precise provenance of an asset and by extension to determine to which country or community it should be returned;

[24] Art 8(2) of the UNIDROIT Convention provides that 'the parties may agree to submit the dispute […] to arbitration'. See F Shyllon, 'The Recovery of Cultural Objects by African States through the UNESCO and UNIDROIT Conventions and the Role of Arbitration' (2000) Revue de droit uniforme 219.

– Changes in the sovereignty of territories and communities: cultural property may have been taken from a territory and a community during colonial times, but the sovereignty over that territory may have changed over time or the communities affected by the spoliation may have moved from their territory of origin and be in another sovereign State;

– Damage or loss: over the years, some removed cultural property may have been damaged, lost or even destroyed; these circumstances affect the possibility of restitution and raise questions about possible compensation or repair;

– Scarcity of documentary evidence: in cases of cultural property removed in colonial times, it may be difficult to find clear documentary evidence proving the provenance and ownership of cultural property and make it difficult to identify the rightful owners;

– Domestic legal limitations: national laws may impose limitations or restrictions on the return of cultural property removed in colonial times; for example, the statute of limitations for legal action may have expired or there may be specific rules limiting the return of removed cultural property qualified as national cultural heritage by the former colonial power.

To overcome these difficulties, some States have adopted internal legislation on the restitution of cultural property acquired during colonial times, although this legislation often follows different approaches depending on the relevant national context. In this respect, the laws of former colonial powers, such as France[25] and Belgium[26] can be mentioned. These laws are unilateral initiatives of a State, undertaken with the intention of pursuing the objective of increasing or consolidating friendly relations with former colonial territories. However, while the French law is limited in scope to settling individual restitution disputes, contrary to the wishes of the *Sarr-Savoy Report*,[27] the Belgian law must be emphasised

[25] See 'Loi n 2020-1673 du 24 décembre 2020 relative à la restitution de biens culturels à la République du Bénin et à la République du Sénégal' available at <www.legifrance.gouv.fr/jorf/id/JORFTEXT000042738023>. This law was adopted as an exception to the principle of inalienability of national public collections.

[26] 'Loi reconnaissant le caractère aliénable des biens liés au passé colonial de l'Etat belge et déterminant un cadre juridique pour leur restitution et leur retour' (2 July 2022) available at <https://etaamb.openjustice.be/fr/loi-du-03-juillet-2022_n2022042012>.

[27] 'The Restitution of African Cultural Heritage. Toward a New Relational Ethics' (November 2018) available at <www.about-africa.de/images/sonstiges/2018/sarr_savoy_en.pdf>.

because it is more far-reaching because it determines the legal framework applicable to the restitution and return of property linked to the colonial past of the Belgian State, with the ultimate ambition of establishing bilateral scientific and cultural cooperation agreements with each State of origin for the restitution and return of colonial-era cultural assets, while being extremely careful not to suggest that there has been any legal/official recognition of past wrongdoings by former colonies.[28]

6. *Restitution of cultural property: From law to practice*

The forms of restitution of cultural property removed in colonial contexts may vary depending on the specific circumstances and the wishes of the parties involved.

Direct restitution involves the physical return of removed cultural artefacts to their country of origin. Where this cannot take place through bilateral agreements between the governments involved, alternative forms of direct restitution could be finalised through negotiations between cultural institutions of the countries concerned or through forms of 'voluntary returns'.

An example of an agreement between cultural institutions is that signed in October 2022 by the Smithsonian in Washington with the National Commission for Museums and Monuments in Nigeria to return 29 bronze statues from the Kingdom of Benin stolen by British soldiers during the raid on the Royal Palace in Benin City in 1897 to Nigeria; the Smithsonian paid for the transport of the artefacts and funded local educational programmes; in addition, the Benin Bronzes will be able to return to Washington periodically for a series of exhibitions.[29]

This Report followed the speech made on 28 November 2017 in Ouagadougou by the President of the Republic, who on that occasion cited the issue of African heritage among the challenges enabling the construction of a new relationship of friendship between France and Africa, and affirmed the possibility of the restitution of works from French public collections, in order to enable young Africans to have access to the continent's heritage in Africa and no longer just in Europe.

[28] M-S de Clippele, 'Pioneering Belgium: Parliamentary Legislation on the Restitution of Colonial Collections' (2022) 2 Santander Art and Culture L Rev 323.

[29] 'News Release: Smithsonian Returns 29 Benin Bronzes to the National Commission for Museums and Monuments in Nigeria' (11 October 2022) available at <www.si.edu/newsdesk/releases/smithsonian-returns-29-benin-bronzes-national-commission-museums-and-monuments>.

Voluntary returns may arise from an autonomous decision of an individual cultural institution or museum which holds one or more artefacts removed in colonial contexts. An example is the decision by the Cambridge University Museum of Archaeology and Anthropology, formulated in December 2022, to return over 100 bronzes from the Kingdom of Benin which had been removed by the British military during the sacking of Benin City in 1897 to Nigeria.[30] Nevertheless, this and other similar decisions demonstrate the disadvantage of not having a clear legal framework as they are left to the goodwill of the adopting party. In the cited case, for example, in May 2023, the Cambridge University Museum decided to postpone the return after a decree, adopted by the Nigerian President on 28 March 2023, appointed a Nigerian traditional ruler as the owner and custodian of all the artefacts that would be returned.[31] This decision must be criticised because it conditions the ability of the country receiving the restitution to freely dispose of its cultural heritage once it has been recovered.

In some countries, such as Germany,[32] Belgium[33] and England,[34] national museums and cultural institutions have also adopted policy papers for dealing with artefacts acquired from colonial contexts and provided recommendations to be followed in cases of restitution. But, in principle, the *ICOM Code of Ethics for Museums* already provides a universal basis

[30] 'Cambridge University to return Benin Bronzes to Nigeria' (14 December 2022) available at <www.bbc.com/news/uk-england-cambridgeshire-63973271>.

[31] M Dzirutwe, 'Return of Benin Bronzes delayed after Nigerian president's decree' *Reuters* (10 May 2023) available at <www.reuters.com/world/africa/return-benin-bronzes-delayed-after-nigerian-presidents-decree-2023-05-10/>.

[32] See German Museums Association, 'Guidelines for dealing with artefacts acquired from colonial contexts (Leitfaden zum Umgang mit Sammlungsgut aus kolonialen Kontexten)' (3rd edn 2021) available at <www.museumsbund.de/wp-content/uploads/2021/03/mb-leitfaden-en-web.pdf>. This text outlines some core recommendations: a) not every discussion that looks like a restitution demand must end in restitution; b) the museums are urged to consider alternatives to the restitution of the physical object; c) if there is a clear right to restitution, the object must be given back and the museum or the relevant authority should not advance the argument based on prescription or time lapse; d) all claims dating to the colonial times are time-barred.

[33] 'Ethical Principles for the Management and Restitution of Colonial Collections in Belgium' (June 2021) available at <https://restitutionbelgium.be/en/foreword>.

[34] Arts Council England, 'Restitution and Repatriation: A Practical Guide for Museums in England' (September 2023) available at <www.artscouncil.org.uk/supporting-arts-museums-and-libraries/supporting-collections-and-cultural-property/restitution-and-repatriation-practical-guide-museums-england>.

for dealing with collections from colonial contexts and setting common standards by focusing on dialogue based on scientific, professional and humanitarian principles.[35]

Cultural property can also be returned temporarily through long-term loan agreements. This allows the country of origin to recover legal ownership and the holding country to continue to exhibit cultural goods in its museums for a specific period. In 2002, an agreement between France and Nigeria on the statuettes of Nok and Sokoto recognized Nigeria's ownership title over the statuettes, in exchange for a renewable 25-year loan to the Quay Branly Museum (France).[36]

Rather than returning cultural goods directly, cultural institutions may also opt for museum collaboration. This can include temporary exchanges of artworks, joint research programmes, shared exhibitions or collaborative restoration projects. In 2010, the Government of the Republic of Peru and Yale University signed a Memorandum of Understanding according to which Yale agreed to return all artefacts removed from the site of Machu Picchu between 1912 and 1916 to Peru upon completion of an inventory.[37] This MoU was followed by a second Memorandum of Understanding in 2011 between Yale University and the Universidad Nacional de San Antonio Abad del Cusco, whereby the two institutions agreed 'to collaborate and jointly develop an international facility and associated programs designed to serve as a base for the display, conservation and study of the Machu Picchu collections as well as for the

[35] 'ICOM Code of Ethics for Museums' (adopted in 1986 and revised in 2004) available at <https://icom.museum/en/resources/standards-guidelines/code-of-ethics/>.

[36] 'Press Release 5 March 2002 ICOM Red List: Nigeria's Ownership of Nok and Sokoto Objects recognised' CIMCIM Bulletin No 48 (March 2002) 1-2 available at <https://cimcim.mini.icom.museum/wp-content/uploads/sites/7/2019/01/Bulletin_48_March2002.pdf>; 'Une convention entre la France et le Nigéria à propos des œuvres Nok et Sokoto du futur musée du quai Branly' (13 February 2002) available at <http://www2.culture.gouv.fr/culture/actualites/communiq/tasca2002/nok.htm>. However, the agreement between France and Nigeria over the Nok and Sokoto statuettes was formally based on Article 7 of the 1970 UNESCO Convention.

[37] A Chechi, L Aufseesser, M-A Renold, 'Case Machu Picchu Collection – Peru and Yale University' (2011) Platform ArThemis (Art-Law Centre, University of Geneva), available at <https://plone.unige.ch/art-adr/cases-affaires/machu-picchu-collection-2013-peru-and-yale-university/#F13>.

interchange of students, scholars and scholarship regarding Machu Picchu and Inca culture'.[38]

In some cases, cultural property can be returned through digitisation and/or the creation of replicas. This allows the country of origin to keep a digital copy of cultural goods and to display the replicas in its cultural institutions, in particular to bypass practical difficulties that make it impossible to transfer the requested objects from the holding country. In 1984, for example, an agreement was concluded under the aegis of the ICPRCP between the Government of Jordan and the Cincinnati Art Museum (USA), whereby the two parties agreed to exchange plastic casts of the parts of the sandstone panel of Tyche with the Zodiac held by each of them.[39]

Finally, restitution can also take the form of a donation, which entails the transfer of ownership of the requested object. For instance, in 2008, an eye from a statue of Amenhotep III was first donated by a private person to the Antikenmuseum in Basel (Switzerland), where it was being held, and then donated by the museum to the Egyptian State.[40]

In closing, it is worth highlighting that the issue of the restitution of cultural property removed in colonial times was once an issue that concerned bilateral relations among States or among States and individual cultural institutions, and has now become a relevant issue in international relations, as was demonstrated by the G20 Culture Ministers Meeting, held in India on 26 August 2023, where the States involved affirmed that they support 'an open and inclusive dialogue on the return and restitution of cultural property, building on a broad historical perspective that renews relationships between countries, while also enabling alternate dispute resolution mechanisms, as appropriate'.[41]

[38] 'Memorandum of Understanding between Universidad Nacional de San Antonio Abad del Cusco and Yale University Regarding the UNSAAC-Yale University International Center for the Study of Machu Picchu and the Inca Culture' (11 February 2011) available at <https://plone.unige.ch/art-adr/cases-affaires/machu-picchu-collection-2013-peru-and-yale-university/memorandum-of-understanding-between-the-government-of-peru-and-yale-university-11-february-2011/view>.

[39] UNESCO, Final Report, Intergovernmental Committee, 5th session (29 June 1987) Doc 24 C/94 available at <https://unesdoc.unesco.org/ark:/48223/pf0000075160>.

[40] M Cornu, M-A Renold, 'New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution' (2010) 17 Intl J Cultural Property 1, 21.

[41] G20 Culture Ministers' Meeting Kashi Culture Pathway, 'Outcome Document and Chair's Summary' (Varanasi 26 August 2023) para 7.1 available at <www.g20.in/content/dam/gtwenty/gtwenty_new/document/2--new/G20_Culture_Ministers_Meeting_Outcome_Document_and_Chairs_summary.pdf>.