

Return or remain?

The National Museum of Ethnology in Leiden and the
restitution case of the Singhasari statues from Java



Robin Tolenaar
S1333356

robintolenaar@hotmail.com

Supervisor: Dr. W. J. L. M van Damme

Second supervisor: Dr. J. van Beurden

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Contents

| | |
|---|----|
| Acknowledgments | 1 |
| Introduction | 3 |
| Chapter 1: Legal instruments related to the return of cultural heritage objects | 8 |
| 1.1 <i>Before the twentieth century</i> | 9 |
| 1.2 <i>The twentieth century</i> | 11 |
| 1.21 Before the Second World War..... | 11 |
| 1.22 After the Second World War | 13 |
| 1.3 <i>The twenty-first century</i> | 19 |
| Chapter 2: Colonial history and restitution in the Netherlands | 23 |
| 2.1 <i>Dutch colonial history</i> | 23 |
| 2.2 <i>Legislation concerning colonizer-looted art in the Netherlands</i> | 24 |
| 2.21 International cultural heritage legislations applied to the Netherlands | 24 |
| 2.22 Historical overview of Dutch national cultural heritage legislations | 27 |
| 2.3 <i>Colonizer-looted art restitution in Dutch heritage institutions</i> | 29 |
| 2.31 Materialized return cases | 29 |
| 2.32 Non-materialized return cases | 31 |
| Chapter 3: The Museum of Ethnology in Leiden and the case of the Singhasari statues | 33 |
| 3.1 <i>The Museum of Ethnology in Leiden</i> | 33 |
| 3.2 <i>The Singhasari statues</i> | 34 |
| 3.3 <i>The Singhasari statues: the restitution request and legal proceedings</i> | 36 |
| 3.31 The restitution request | 36 |
| 3.32 A legal approach..... | 40 |
| Conclusion..... | 50 |
| Images | 52 |
| Appendices | 53 |
| Bibliography..... | 57 |

Introduction

For the last few months, colonial looted art and its return has been a hot topic in many news items. An example is an article in *The Guardian*, published on 21 November 2018, which discusses a report commissioned by the French president Emmanuel Macron that calls for thousands of African artworks in French museums, taken during the colonial period without consent, to be returned to Africa, unless it can be proven that the objects were obtained legitimately. It was even recommended to change the French law to allow the restitution of the artworks to Africa.¹

Since in so many countries nowadays changes are taking place concerning both the ways that these countries and their museums deal with the restitution of their collections of colonial art and the legislations that exist on how to deal with these collections, restitution and its legislation constitute important objects of research.

This research focuses on the National Museum of Ethnology in Leiden, the Netherlands, taking as its case discussions concerning the request for restitution of four Hindu-Buddhist statues that were confiscated by the Dutch from the Singhasari temple on Java in Indonesia in 1803 and that have been on display in the Leiden museum since 1903. The stone statues represent the divinities *Nandishwara*, *Mahakala*, *Durga* and *Ganesha* (images 1 – 4). The statues were claimed back by Indonesia in 1974. In 2017, Dr. Jos van Beurden was one of the first to point out that in the long list of objects that Indonesia wanted to be returned, the Singhasari statues were mentioned specifically.²

The main question of this research is: Why are the Singhasari statues still in the National Museum of Ethnology in Leiden despite Indonesia asking them to be returned?

The main question is divided into sub questions, which are: Which worldwide and European legislations exist concerning colonizer-looted art? Which Dutch legislations exist concerning colonizer-looted art? How was the situation after Indonesia's independence from the Netherlands in 1945? Is it possible to apply the legislations to the Singhasari case and use them to try and claim the statues back? Would the Singhasari statues in theory be returned if Indonesia would nowadays submit another claim?

¹ *France urged to change heritage law and return looted art to Africa*, https://www.theguardian.com/world/2018/nov/21/france-urged-to-return-looted-african-art-treasures-macron?utm_source=dlvr.it&utm_medium=facebook&fbclid=IwAR1NKO3dZMMudQqgFNiJ7x1IJrvQVldOxjGmCTgliLjTHYfcKVYxNo731sQ, visited on 8 January 2019.

² Van Beurden 2017, p. 140.

Scope

Since this thesis deals with an art and cultural historical research and not a legal research, the intention is not to provide a legal analysis of the restitution case of the Singhasari statues. It is not the intention of the author to provide Indonesia with solid legal arguments to be able to submit a claim to get the Singhasari statues to be returned to Indonesia. When discussing a return case, many aspects come to the table. Examples are the legal aspects of the return case, the extent to which a country is able to take good care of an artwork, how many people will see the artwork when it is not displayed in an important Western museum and whether or not the artwork was sold legally in colonial times. Furthermore, it is important to remember the cultural and/or religious meaning of an artwork for the country of origin, which could possibly not be provided for in a Western museum. Moreover, in this particular case one can consider if the return question can be answered differently when considering that the claim was already made in 1974; is the 1974 claim still active or does Indonesia need to do another claim? Lastly, the extent to which the statues are war booty is a difficult question that needs to be answered to be able to reply to the restitution question.

As can be seen here, many arguments and discussions arise when one tries to judge the question of the returning of colonizer-looted art. In the conclusion of this research, the arguments that are applicable to the case study of this thesis will be discussed in the light of what has been researched.

Status quaestionis

The Singhasari case has not been analysed before. However, as for the various topics discussed in this thesis, the following analyses have already been made.

The following literature discusses the legislations that exist for (colonizer-) looted art in Europe as well as worldwide. An important publication regarding the worldwide and European legislations is *Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects*, published by UNESCO and edited by Lyndell V. Prott in 2009, is a compendium with writings from some of the world's leading experts in the field of return and restitution of cultural objects. It extends beyond the purely legal aspect and gives an outline of the historical, philosophical and ethical aspects of the return of cultural objects, cites past and present cases and analyses legal issues.

In 2006 Ana Filipa Vrdoljak wrote the publication *International Law, Museums and the Return of Cultural Objects*. This book explores the removal and the return of cultural objects from occupied communities during the last two centuries and analyses the concurrent evolution of international cultural heritage law. It focuses on the significant influence exerted

by British, US and Australian governments and museums on international law and museum policy in response to restitution claims. It shows that these claims provide museums with a vital new role in the process of self-determination and cultural identity.

Ann M. Nicgorski and James A. R. Nafziger published *Cultural Heritage Issues: The Legacy of Conquest, Colonization and Commerce* in 2009. This book aims to define and explain the threats to the cultural heritage of our civilizations. It contains essays which are based on papers presented at an international conference on cultural heritage issues that took place at Willamette University. The conference sought to generate fresh ideas about these cultural heritage issues, to offer a good sense of their nuances and complexities and to reveal how culture, law, and ethics can interact, complement, diverge, and contradict one another. This publication seeks to accomplish these purposes.

For the second chapter, the 2012 publication *The Return of Cultural and Historical Treasures: The Case of The Netherlands* by Jos van Beurden proved to be a useful source of information. In this book Van Beurden researches cases in which the Dutch state and Dutch heritage institutions have been handing over cultural and historical objects that were acquired in colonial times and more recently. He investigates the dynamics of their return practice and gives his analysis extra depth by including cases in which return has not been materialized. Furthermore, in the second chapter many legislations already mentioned in the first chapter were analysed to see if they apply to the Netherlands.

The third and final chapter discusses first of all the history of the National Museum of Ethnology in Leiden and the Singhasari statues. Subsequently, the situation after Indonesia's independence from the Netherlands in 1945 is discussed. The following literature analysed these topics.

Ancient Indonesian Art (1959), written by A. J. Bernet Kempers, is an important publication that gives the reader a lot of information on the history of the Singhasari temple and the statues that are the case study in this research. It also discusses the Dutch taking the statues to the Netherlands.

Treasure Hunting? Collectors and Collections of Indonesian Artefacts (2002) by Reimar Schefold and Han F. Vermeulen explores the history of searching and acquiring artworks from Indonesia. It contains fourteen essays, which are all written by museum professionals and anthropologists. The essays focus on the past processes of collecting in Indonesia and the museums that have these collections. Besides, the motivations of the collectors are discussed.

After that, the request that was made by Indonesia in 1974 for the return of many cultural objects from the Netherlands to Indonesia is discussed. In his pioneering study *Treasures in Trusted Hands. Negotiating the Future of Colonial Objects* (2017), Jos van Beurden discussed the one-way traffic of cultural and historical objects during five centuries of European colonialism and the restitution of these types of objects. The publication presents examples of colonial objects that are nowadays mostly present in Western museums and other collections and systematizes these into war booty, confiscations by missionaries, contestable acquisitions by private persons and other categories. Van Beurden points out how in the 1970s, the Netherlands and Belgium returned objects to their former colonies Indonesia and DR Congo; but their number was considerably smaller than what had been asked for. The Singhasari statues are one of the many examples mentioned.

The chapter concludes with a discussion concerning the legislations discussed in the first two chapters. It tries to apply these legislations to the Singhasari case and with this, attempts to find out if, in theory, legislations exist that Indonesia could use to try and claim the statues back. At the end of the chapter, the *Return of Cultural Objects: Principles and Process Nationaal Museum van Wereldculturen 7-3-2019*, published by the Nationaal Museum voor Wereldculturen, will be discussed in the light of the Singhasari restitution case.

Within the field of cultural heritage and art restitution, nowadays the majority of the researchers find it important that the debate concerning restitution is open and that restitution is considered a plausible option. However, often it is also discussed that restitution is not always the best option when it comes to for instance the taking care of the artwork in question. Besides, when discussing the legislations that exist concerning art restitution, one finds out that these do not necessarily make the debate easier. This opinion is mostly embodied by Prott and Vrdoljak. I agree with this last concept, since in my opinion the well-being of the artwork comes first.

According to Jos van Beurden, more legislation concerning colonizer-art restitution should exist. He even applied the 1998 Washington Principles to colonial art since he thinks that colonial art lacks this type of legislation.³ I agree with the idea that there has to be more legislation when it comes to colonizer-looted art, since this would possibly make the restitution question easier for the ex-colonies when wanting to submit a claim to get the artworks returned. An example of the developments within this field is the publication of the principles for the claims for return by the NMVW on the 7th of March 2019.

³ The 1998 Washington Principles is a soft-law statement concerning the restitution of art confiscated by the Nazi regime in Germany before and during World War II. Interview with Jos van Beurden, 12 April 2018. Van Beurden 2017, p. 241.

Research method

The main research method applied in this thesis is that of a literature review, which covers two types of literature. The first type of literature focuses on different types of legislation regarding cultural heritage and its restitution. Moreover, literature that aims to define and explain the threats to cultural heritage was used. Furthermore, an interview was done with Francine Brinkgreve, the curator of the Insular Southeast Asia Collection of the National Museum of Ethnology in Leiden and with Jos van Beurden, the author of among others the 2017 publication *Treasures in Trusted Hands. Negotiating the Future of Colonial Objects*.

Terminology

The reader has to bear in mind that different terms exist in the world of art restitution. In this research, most of the time the terms ‘return’ and ‘restitution’ are used when it comes to the going or giving back of an artwork to its country of origin. ‘Return’ is often seen as a more neutral term, indicating more than solely the connection with looted art. ‘Restitution’, however, is a term that indicates the giving back of a wrongfully acquired objects to its original owner – whether it be a country, person, museum or something else. Another term that has to be explained, is ‘repatriation’. This term is even more specific than ‘restitution’, since it focuses on the giving back of an object to its *patria* – Latin for fatherland –, a state or an indigenous people or other actor inside a state, and often concerns human remains.⁴

⁴ Van Beurden 2017, p. 33.

Chapter 1: Legal instruments related to the return of cultural heritage objects

The aim of this chapter is to give the reader an overview of the most important legal instruments that exist concerning the restitution of cultural heritage, and which could be applied to or are important to this particular case study. Before doing this, however, it is important that the reader has a complete, albeit brief, overview of all the legislations, since only then can we meaningfully discuss the possible return of the Singhasari statues. Besides, different types of legal instruments will be discussed, for instance the difference between soft and hard law, and some alternatives to litigation, for example mediation and arbitration.

In reading this chapter, the reader should keep a few things in mind.

First of all, even though I am striving to give as complete an overview as possible, at the same time I have to keep focussing on my case study. Because of this, I will not list out all the existing laws concerning colonizer-looted art, but only the ones that are important to my research and/or have had an important influence on other legislations that are essential to my research. In the attachment added to this thesis, a more elaborate list of legislations concerning this topic can be found.

Secondly, in this chapter I will focus on European legislations, because most of the time the legislations in Europe are the ones applicable to my case study. However, some global legislations might also be important to apply to my case study and thus have to be taken into account in this chapter as well.

It is also important that the reader has a basic understanding of the differences between the types of legislations that exist within the world of cultural heritage restitution and which are mentioned in this chapter.

First of all, the scholars talk about *conventions*. A convention is an agreement under international law entered into by actors in international law, namely sovereign states and international organizations.

The same definition is used for *treaty* and *pact*. A convention can also refer to the meeting in which it is discussed to make such a treaty.

A *regulation* is a rule made by a government or other authority in order to control the way something is done or the way people behave. This can be done nationally as well as internationally.

An *act* is a bill which has passed through the various legislative steps required for the bill and which has become law.

A *draft* is the preparation of any written legal document.

A *resolution* is a written motion adopted by a deliberative body. The substance of the resolution can be anything that can potentially be proposed as a motion.

A *recommendation* is a form of Act of the European Union that has no binding force.

Lastly, a *code* is a collection of written laws gathered together, usually covering a specific topic.

1.1 Before the twentieth century

Already in the seventeenth century people spoke about the protection of cultural property. The principle of universal restitution of private property, which was recorded in the 1648 *Treaty of Westphalia*, is often seen as the first sign of an emerging ban on looting cultural property.

However, this principle was mainly focused on the protection of archival materials that were needed for the administration of states. It can thus not really be interpreted as providing for the restitution of cultural property as such. According to Prott, however, it is a basis for the rules for the legal protection of cultural property in times of armed conflict, rules which were formalized in the nineteenth and twentieth centuries.⁵

In 1815, discussions led to the *Second Treaty of Paris* on November 20. After the defeat of Napoleon, stolen art now was an important topic to discuss since France had to return spoils of war. The drastic change in scale, organization and legitimization of art seizures during the Napoleonic wars prompted the decision to ‘return’ all looted artworks.⁶ Important is, however, that France did not have to return the objects to their countries of origin but to victorious European countries and the Vatican. In this time, the principles for dealing with war booty only applied to intra-European state relations and not to those with distant colonial territorial possessions or with indigenous entities. The dominant international legal discourse did not recognise them as international legal persons.⁷

In 1789 in Europe the rights of people were formulated in the *Déclaration des Droits de l’Homme et du Citoyen*. However, these rights were restricted to Europeans and excluded

⁵ Prott 2009, pp. 2-5.

⁶ Gaudenzi, Swenson 2017, pp. 502-504.

⁷ Van Beurden 2017, pp. 60-63.

others. European powers considered territories not ruled by Christians as ‘terra nullius’ – no mans’ land. According to them, this entitled them to conquer these lands. On 26 February 1885 during the *Berlin Conference*, the European powers agreed to notify each other of effective occupations, which other European powers then respected. This was a small step from a ‘terra nullius’ to a ‘res nullius’ – a no man’s object. Cultural objects, for instance those collected by missionaries and collectors, were seen as res nullius and could thus be taken without problems.

An important development which has led to a better protection of the cultural heritage of colonised peoples, was the introduction, in the end of the nineteenth century, of legislation to protect indigenous cultural heritage against attempts of for instance scientists and collectors from other European countries – other than those of the colonizers themselves – to get hold of it. Even though it was not meant as an advantage for the indigenous population, it still provided a better protection of the cultural heritage – which made it an advantage after all. From 1844 onwards, lists of monuments were made and in Asia and Africa museums were built by the European powers in which objects of essential cultural importance were placed. For example, in Indonesia the museum of the Batavian Society for Arts and Sciences was erected. It had a budget for purchasing objects of essential cultural importance. Less essential objects were sent to institutions in the Netherlands, such as the National Museum of Ethnology in Leiden.⁸

In 1863 the *Lieber Code* was written and published during the American Civil War. It includes, among other things, provisions concerning the protection of cultural property in wartime. Despite the fact that the Lieber Code was not legally binding, it had a huge legal value, since it was one of the earliest texts of modern humanitarian law.⁹ Besides, it served as a model for subsequent coding and contributed to the development of laws concerning the protection of cultural heritage. The latter makes the Code important for this research.

Another important declaration that exercised influence on the development of laws concerning the protection of cultural heritage, is the *International Declaration concerning the Laws and Customs of War* executed in Brussels in 1874. However, not all governments were willing to accept it as a binding convention, so it was not ratified.¹⁰ Still, together with the 1863 *Lieber Code* it formed the basis of the two Hague Conventions on land warfare and the Regulations annexed to them, adopted in 1899 (Convention NO. II) and 1907 (Convention

⁸ Van Beurden 2017, pp. 77-78.

⁹ ‘Legally binding’ means ‘enforceable by law’.

¹⁰ If something is not ‘ratified’ it means that it is not signed or given formal consent to; making it not officially valid.

NO. IV).¹¹ These are called the *Hague Regulations Respecting the Laws and Customs of War on Land*. The 1899 Convention and Regulations were the first international instruments to codify rules derived from the customary practice of states in war. Many of the provisions which originated in the 1899 text were carried over into the 1907 Regulations.¹² Article 3 of the 1907 treaty allows states to claim back cultural objects removed from their territories, but the treaty regulates warfare and thus its provisions are only applicable to cultural objects that have been transferred in the course of war.¹³ Besides, since the conventions such as the 1899 and 1907 Hague Conventions and the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (including the first and second protocol, 1954, which will be discussed in the following paragraph) are agreements between states, and colonial territorial possessions were never recognized as states, and since they are not retroactive, the measures taken until early in the 20th century have little legal relevance for former colonies.¹⁴

1.2 The twentieth century

1.21 Before the Second World War

On the 10th of January 1920 the *League of Nations* was founded as a result of the 1919 *Paris Peace Conference* that ended the First World War. Its principal aim was world peace. In 1922 the *International Committee for Intellectual Cooperation (ICIC)* was erected as an advisory committee of the League of Nations. The ICIC was the predecessor to UNESCO and promoted the idea that peace amongst nations can be attained through a joint effort at intellectual understanding across political boundaries. The realisation of the world community required the recognition and promotion of firstly the diversity of national cultures and secondly their universality. The ICIC supported the idea that international peace and stability depended upon countries having self-confidence and tolerance arising from knowledge of their own culture.¹⁵

In 1932 the General Assembly of the League of Nations commissioned the *Office International des Musées (OIM)* to prepare a draft convention on the return of either lost or stolen cultural artefacts. In 1933 the OIM presented its first draft, but it could not be adopted because of the hesitancy of, in particular, the Netherlands, the United Kingdom and the

¹¹ Nicgorski, Nafziger 2009, p. 137.

¹² Bos 2005, p. 36.

¹³ Article 3 of the 1907 Hague Convention IV: "A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." Tasdelen 2016, p. 10.

¹⁴ Van Beurden 2017, p. 99. 'Retroactive' means 'the application of a given rule to events that took place before the law was in effect'.

¹⁵ Vrdoljak 2006, p. 109.

United States of America. To make the draft more acceptable for these states, in 1936 and 1939 the OIM prepared two further drafts, each with a tighter scope. The three drafts varied as well with regard to the cultural property covered, as in the state parties' obligations regarding the return of the cultural artefacts. The first draft enclosed all tangible objects of artistic, historical and scientific type, while the second draft restricted the scope to tangible objects of a specific paleontological, archaeological, historical or artistic nature. The third draft narrowed the scope still further to only those tangible objects of specific paleontological, archaeological, historical or artistic nature that are the property of or in the possession of either the state or a public entity and, in addition, are documented as part of a national collection. Regarding the obligations of state parties concerning return, the drafts show a similar increasingly restrictive tendency: in the first draft it was written that any transfer of property from the originating state was void if the stated objects had reached the territory of the receiving party by disobeying national export regulations of the state of origin. This regulation was abandoned in the second draft. The third draft acknowledged claims for return only for cases in which the objects had been transferred to the territory of the receiving party by breaking regulations of the state of origin which are enforced by penalty. However, with the outbreak of World War II the negotiations ended abruptly and none of the drafts were ever adopted.¹⁶

The next three conventions have had a considerable influence on the development of international organisations regarding the protection of cultural property. However, since these three are American conventions and thus less important for this particular research, they are only mentioned briefly.

The *Pan-American Union* (PAU) had as one of its goals to formulate an American international law. The PAU treaties included the *Treaty on the Protection of Movable Property of Historic Value* (1935 PAU Treaty) which promoted mutual recognition of export restrictions between State parties and restitution procedures in cases of illicit export, the 1933 *Roerich Pact* and the *Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments* (1935 Washington Treaty) which provided protection for monuments in peace- and wartime. Regarding the 1935 Washington Treaty, its significance lies in the fact that it is the first multilateral treaty explicitly devoted to cultural property removed during peacetime. Besides, it was the first multilateral treaty – although regional in nature. Because of these two aspects, it was a forerunner to future international agreements.¹⁷

¹⁶ Tasdelen 2016, pp. 10-11.

¹⁷ Vrdoljak 2006, pp. 134-135.

1.22 After the Second World War

During the Second World War the Allies already announced their intent to restore cultural property without waiting to do so in a reactive way in peace treaties, as had happened after the First World War. The first distinct announcement by the Allies, was the 1943 *Inter-Allied Declaration against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control*, or the *Declaration of London*. It was enforced by a number of other legal instruments that ensured that the international principle of restitution asserted by the Allies would not be negated by conflicting plans in national law. Besides, the Allies put pressure on the neutral states, who had not been parties to the declaration, to adopt similar legislation.¹⁸

After the Second World War, some important developments took place. First of all, on the 16th of November 1945 the *United Nations Educational, Scientific and Cultural Organization* (UNESCO) was founded as a specialized organization of the United Nations. Its mission is to contribute to peace, to reduce poverty and to contribute to sustainable development and intercultural dialogue by using education, science, culture and communication.¹⁹ Further on in this chapter more will be discussed about UNESCO regarding their contribution to the protection of cultural heritage.

Secondly, the *Convention on the Prevention and Punishment of the Crime of Genocide* was adopted by the United Nations General Assembly on the 9th of December 1948 as General Assembly Resolution 260. The Convention entered into force on the 12th of January 1951. It defines genocide in legal terms. All participating countries are advised to prevent and punish actions of genocide in war and in peacetime. Another essential development in 1948 was the adoption of the *Universal Declaration of Human Rights* on the 10th of December 1948 by the United Nations General Assembly. It consists of thirty articles confirming an individual's rights which, although not legally binding in themselves, have been clarified in subsequent international treaties, regional human rights instruments and other laws. The Genocide Convention and Universal Declaration of Human Rights are important relating to cultural property, because thanks to the Genocide Convention the act of genocide is not being accepted anymore within the countries that signed the convention, which automatically means that the respecting of other cultures, including their cultural heritage, is being forced. The same applies to the Universal Declaration of Human Rights.

¹⁸ Prott 2009, p. 5.

¹⁹ UNESCO in brief, <https://en.unesco.org/about-us/introducing-unesco>, visited on 31 October 2018.

Before discussing relevant legal instruments, it is important to consider the difference between hard law and soft law. For, from the 1950s onwards, a separation between these two types of law has been visible, especially within UNESCO, which is the only organization with the authority for the making of laws for cultural heritage at a universal level, and it has indeed been responsible for a considerable body of international laws on the topic. ‘Hard law’ refers to actual binding legal instruments and laws. In contrast with soft law, hard law gives States and international actors actual binding responsibilities as well as rights. Within UNESCO, hard law instruments are its conventions and protocols. The term ‘soft law’ refers to quasi-legal instruments which do not have any legally binding force, or whose binding force is weaker than the binding force of traditional law. Examples of soft law instruments are declarations, guidelines and recommendations.²⁰

An important example of a hard law instrument is the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*. It was the first international treaty that was devoted wholly to the protection of cultural property in times of war.²¹ This convention had two protocols, to assist and promote its execution. The first one, from 1954, deals with questions regarding the exportation and importation of cultural property from occupied territory, and with the return of cultural property deposited abroad for the duration of hostilities.²² The second one, from 1999, seeks to complement and expand upon the provisions of the Hague Convention, by including developments in international humanitarian law and cultural property protection which had appeared since 1954. It builds on the plans that the Convention contains when it comes to the safeguarding of and respect for cultural property, as well as the handling of hostilities; thereby providing greater protection for cultural property than the Hague Convention and its First Protocol offered.²³

From the 1960s onwards, former colonies became more aware of their independency against the former colonial powers. Together with this, the former colonies became aware of their rights when it comes to the restitution of cultural heritage and they strove towards establishing a national identity. An example that illustrates this situation, is the 1960 *UNGA Resolution*, or the *Declaration on the Granting of Independence to Colonial Countries and Peoples*, a soft law instrument.²⁴ For Native peoples, whose objects were collected under colonial regimes, repatriation became a symbol for the wider goals of self-determination and community healing. In the climate of post-1960s social activism, indigenous peoples

²⁰ Nicgorski, Nafziger 2009, pp. 277-278.

²¹ Tasdelen 2016, p. 5.

²² O’Keefe 2011, p. 94.

²³ Ibidem 2011, p. 241.

²⁴ Vrdoljak 2006, pp. 197-198.

mobilized around issues of self-government, land rights, religious freedom, and cultural revitalization.²⁵ However, creating a national identity was not always possible since within the former colonies local interests sometimes surpassed national interests. The Native peoples were sometimes also part of a postcolonial overarching national governments that might not always have cared for local interests.

An echo of the concern of the releasing of colonial ties is also found in the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. In this convention, a hard law instrument, it is provided that states parties to the 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.²⁶ It introduced a system for the restitution of misappropriated artefacts when claimed. According to Article 7(b)(ii) of the Convention, ‘States Parties undertake, at the request of the State Party ‘of origin’, to take steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property.’²⁷ Despite the fact that the 1970 Convention marked a number of important changes in the field of colonial art restitution, one important aspect is missing from the Convention: it applies only to claims for the return of cultural objects taken after the convention came into force. In other words, within the 1970 Convention there is an absence of the retroactivity clause. As Prott concludes: ‘Thus title to cultural property taken from colonies and recognized at that date by the domestic law of the holding States (and by that version of international law which they had insisted upon in the preceding centuries), was challenged, but the 1970 Convention did not decide on this issue.’²⁸ Due to this regulation, the Convention offers no legal remedy for disputes about colonial objects.²⁹ In 1973, DR Congo submitted General Assembly Resolution 3187 (XXVIII) on the *Restitution of works of art to countries victims of expropriation*, which was meant to relieve the absence of a retroactivity clause in the 1970 Convention. In 1975, DR Congo submitted a diluted Resolution 3391, with the same title as the one of 1973, but instead of covering ‘all objects’ it was limited to ‘small representative

²⁵ Glass 2004, pp. 116-117.

²⁶ Nicgorski, Nafziger 2009, p. 261.

²⁷ Vadi, Schneider 2014, pp. 65-70.

²⁸ Prott 2009, p. 206.

²⁹ Van Beurden 2017, p. 99.

collections, where such did not exist'.³⁰ Comparable resolutions have been accepted in the following years. The item has been kept on the UN agenda but has produced little effect.³¹

In 1978 UNESCO installed the *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation* (ICPRCP). The ICPRCP discusses objects of fundamental significance that were lost as a result of colonial or foreign occupation or as a result of illicit appropriation.³² The reasons for the installation of this Committee are as follows: first of all, the goal was to fill the vacuum, which had been created by the absence of a retroactivity clause in the 1970 Convention. Secondly, the Committee was installed since the current practice relating to the return of cultural property shows that most of the time law does not adequately deal with such conflicts and that ethical, social and humanitarian factors also need to be taken into account. Thirdly, diplomatic means of dispute settlement, otherwise known as alternative dispute resolution (ADR) procedures, are usually preferred to national and international judicial proceedings. In the field of cultural property restitution, the most promising and suitable means of dispute settlement seem to be those encompassed by the expression of cultural diplomacy, such as negotiation, mediation, inquiry, conciliation and good offices. Not only is the recourse to these mechanisms useful when given international instruments are not applicable, but it is also encouraged by these instruments, such as the 1978 Committee. The UNESCO Committee has established two means of diplomatic dispute settlement: mediation and conciliation. The definitions of these procedures as provided by the UNESCO Procedures are collected from those provided by the UNESCO Committee Statutes. Mediation means "...a procedure established with the prior consent of the Parties concerned and where an outside party intervenes to bring them together and to assist them in reaching an amicable solution of their dispute with respect to the restitution or return of cultural property." Conciliation indicates "...a procedure established with the prior consent of the Parties concerned, where a given dispute regarding the restitution or return of cultural property is submitted to a constituted organ for investigation and for efforts to effect an amicable settlement of it."³³ In each of these procedures the result is an agreement between the parties. The UNESCO mediation and conciliation procedures are applicable to any request already under consideration by the UNESCO Committee for the restitution of cultural property, provided that it has a "...fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of

³⁰ Prott 2009, p. 14.

³¹ Van Beurden 2017, p. 105.

³² Ibidem 2017, p. 102.

³³ Vadi, Schneider 2014, p. 95.

UNESCO” and “...has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation.”³⁴

There have been, however, less requests and restitutions than expected.³⁵ The Committee’s main role has established its function in raising awareness of the issues of illicit trafficking of cultural heritage from countries of origin and creating an atmosphere favourable to those kinds of restitution cases.³⁶

In the same year, on June 7, the Director-General of UNESCO launched *A Plea for the Return of an Irreplaceable Cultural Heritage to those who Created it*. Despite of the non-retroactivity of the conventional norm, UNESCO has been the driving force in the promotion of the inter-state return of cultural heritage to the country of origin. In this plea, UNESCO called upon States to conclude bilateral agreements for the return of cultural property to the countries from which it had been taken, and to promote long-term loans, deposits, sales and donations between the institutions concerned, in order to encourage a ‘fairer international exchange of cultural property’.³⁷

The International Council for Museums (ICOM) adopted its Code of Ethics for Museums in 1986. This is an important non-legally binding instrument. It is of direct importance for members of ICOM, and indirectly because national museum associations have often implemented the code in national instruments. Since 1986 the ICOM Ethical Code has been mandatory for its members and has set minimum standards of professional practice and performance for museums and their staff. For this research, the following articles are important:

- Article 6.2: Return of Cultural Property

“Museums should be prepared to initiate dialogues 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, in preference to action at a governmental or political level.”

- Article 6.3: Restitution of Cultural Property

“When a country or people of origin seeks the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that

³⁴ Vadi, Schneider 2014, p. 96.

³⁵ Prott 2009, p. 16.

³⁶ Vadi, Schneider 2014, p. 78.

³⁷ Ibidem 2014, p. 72.

country's or people's cultural or national heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to cooperate in its return.”³⁸

These articles are important because, if one takes the Code of Ethics as a reflection of museum morality, one can state that the conventional principles on the restitution of illegally exported or stolen artefacts in the museum world have been elevated as the standard. This means that, even if the UNESCO and other conventions have not been implemented in the laws of the specific country (the UNESCO 1970 norm), post-1970 illegally exported or stolen artefacts should still be restituted upon request.

In as well the 1970 Convention, the ICOM Code of Ethics as the 1995 UNIDROIT Convention – which will be discussed after this – the concept of ‘due diligence’ (or ‘good faith’) is important. According to the ICOM Code of Ethics for Museums, due diligence means: “All the required endeavours to establish the facts of a case before deciding a course of action, particularly in identifying the source and history of an item offered for acquisition or use before acquiring it.” In other words, the due diligence implies all the necessary verifications regarding the legal provenance of a cultural object, i.e. its full history and ownership from the time of its discovery or creation to the present day, through which authenticity and ownership are determined. Since the issue of provenance is one of the most important concepts when addressing the mobility of collections and the transfer of ownership of cultural property, due diligence is therefore one of the best practices for preventing the illicit trade of cultural objects.³⁹ The ICOM Code of Ethics was revised in 2006.

The UNESCO Convention of 1970 had troubles dealing with difficult issues such as limitation and good faith acquisition. This led UNESCO to work with UNIDROIT (International Institute for the Unification of Private Law) to develop a convention dealing with these aspects. The resulting UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects*, 1995 (1995 UNIDROIT Convention) would certainly not have been achieved without the change in public attitudes affected by the 1970 Convention. The 1995 UNIDROIT Convention is regarded as complementary to the 1970 Convention and is promoted by UNESCO at the same time.⁴⁰ The Convention aims to put into effect the restitution principles of UNESCO 1970 by harmonising the private laws of the member states in the field of the restitution of stolen or illegally exported cultural objects. Where UNESCO 1970 aims to prevent illicit traffic (for example by setting standards for national services, export licenses and so forth) as well as setting some general norms for restitution, the UNIDROIT Convention focusses only on the recovery phase and allows restitution claims by

³⁸ ICOM Code of Ethics for Museums, https://www.ecsite.eu/sites/default/files/code_ethics2013_eng.pdf, p. 10.

³⁹ Vadi, Schneider 2014, p. 73.

⁴⁰ Nicgorski, Nafziger 2009, p. 265.

private as well as governmental claimants to be processed directly through national courts. The norm is restitution after illicit export or theft, with the possibility of compensation for the good faith possessor. The UNIDROIT Convention covers all stolen cultural objects, not just those that have been inventoried and declared. It also sets standards for limitation periods and due diligence. If the standards of due diligence are met by the current good faith possessor, he or she (or the institution) is entitled to receive payment of fair and reasonable compensation.⁴¹

From studying the legislations that have arisen in the 20th century, a few things have become clear. The international norm that can be distilled from these international conventions is that the wrongful removal of cultural property is prohibited, both during war and in times of peace, as well as the trade in art objects which have been illegally exported. Stolen or illegally exported works of art should be returned to the original owner, possibly in exchange for payment of fair and reasonable compensation to a good faith acquirer. Private law aspects are dealt with in the UNIDROIT Convention and national implementation laws. These follow the principles set down in the conventions, for example that good faith cannot be assumed but depends on the proven due diligence of the buyer before the acquisition. Public collections, indigenous artefacts and objects taken in times of armed conflict seem to have the strongest position.

1.3 The twenty-first century

In the 21st century, many of the developments initiated in the era before were continued or extended. However, on the other hand some new developments arose from which it became clear that not everyone agreed on the new decisions.

An example is the *Declaration on the Importance and Value of Universal Museums* of 10 December 2002. According to Van Beurden, this declaration mainly has to do with the continuity of colonization. The main change compared to the past was that Western art and antiquity dealers and their collaborators in former colonies replaced the colonial administrators, missionaries and traders. The argument that the eighteen museums gave for this Declaration and thus to end discussion about objects acquired before 1970, was that the objects would have become an inalienable part of the museum's own history.⁴² The signatories did, however, declare their willingness to only acquire collections and cultural

⁴¹ Vadi, Schneider 2014, pp. 68-69.

⁴² The eighteen major museums were museums in Germany, France, Italy, Spain, the Netherlands, the US and Russia. Van Beurden 2017, p. 90.

objects ethically in the future.⁴³ The Declaration starts as follows: “The international museum community shares the conviction that illegal traffic in archaeological, artistic and ethnic objects must be firmly discouraged. We should, however, recognize that objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of that earlier era. The objects and monumental works that were installed decades and even centuries ago in museums throughout Europe and America were acquired under conditions that are not comparable with current ones.”⁴⁴

The 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage* is virtually a copy of the 1972 UNESCO *Convention concerning the Protection of the World Cultural and Natural Heritage* (1972 *World Heritage Convention*). The idea of creating an international movement for protecting heritage emerged after World War I. The 1972 Convention developed from the merging of two separate movements: the first focusing on the preservation of cultural sites, and the other dealing with the conservation of nature. Eventually, a single text was agreed upon by all parties concerned. The Convention concerning the Protection of World Cultural and Natural Heritage was adopted by the General Conference of UNESCO on 16 November 1972.⁴⁵

The 2003 Convention is modelled on the 1972 Convention. Its purposes are:

1. To safeguard the intangible cultural heritage;
2. To ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;
3. To raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;
4. To provide for international cooperation and assistance.⁴⁶

Combined, the two Conventions could conceivably provide a more effective international legal framework for the protection of various forms of cultural heritage, including cultural objects, of these groups.⁴⁷

2005 UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* arose out of a view held strongly by some states that ‘cultural expressions’ should be exempted from certain trade rules. It is a legally binding international agreement that ensures artists, cultural professionals, practitioners and citizens worldwide that they can create, produce, disseminate and enjoy a broad range of cultural goods, services and

⁴³ Vadi, Schneider 2014, p. 167.

⁴⁴ Prott 2009, p. 116.

⁴⁵ *The World Heritage Convention*, <https://whc.unesco.org/en/convention/>, visited on 30 October 2018.

⁴⁶ *Text of the Convention for the Safeguarding of the Intangible Cultural Heritage*, <https://ich.unesco.org/en/convention>, visited on 30 October 2018.

⁴⁷ Prott 2009, p. 199.

activities, including their own. Cultural expressions are conveyed by activities, goods and services, which results in an economic and cultural nature. Due to this dual nature, cultural expressions cannot be seen purely as objects of trade. The Conventions main objective is to strengthen creation, production, distribution/dissemination, access and enjoyment of cultural expressions transmitted by cultural activities, goods and services, with a strong focus on developing countries.

In the last decades, doubts have arisen when it comes to the value that the legal bodies of UNESCO – especially the 2003 and 2005 ones – have had. As Prott states, heritage law has a relatively small budget within UNESCO, which causes a good deal of it to be taken up with simply administering these committees, consequently lessening the amount available for assistance to states with drafting of legislation and implementation of the conventions. Besides, taking these sorts of functions away from the secretariat makes the implementation of the treaty far more political. Finally, action by such supervisory bodies might indeed have represented a serious intergovernmental commitment, if it were not the case that they have no real power to address violations and that, in some instances, these intergovernmental bodies have themselves ignored or contradicted the views of the expert bodies responsible for assessments. Such committees may, however, provide a useful forum for discussion of the best management principles, later embodied in substantial guidelines. The lack of serious legal commitment in these instruments reflects a cynicism on the part of states parties about UNESCO's law-making process.

Of course, conventions do have a very important educational effect, but this should not be their only function. There are other methods of education that may be superior, and a convention alone is certainly not sufficient to educate.⁴⁸

Although strategies such as treaties and litigation in domestic courts have achieved some success in addressing certain cultural property issues, many experts advocate the need for other innovative types of approaches. To an extent, this anxiety arises from the unique nature of cultural objects and the special feelings they evoke because of their symbolic, religious, historical, and aesthetic qualities. Few laws seem to respond to these sorts of considerations because they often appear to be too elusive to permit of the precise definition lawyers usually seek. This perception has led many to propose alternatives to litigation in these cases, such as mediation or arbitration. Partly, this has already been discussed with the ICPRCP and the definitions of mediation and conciliation have also been explained. There are, however, two more important organizations that need to be taken into account concerning this topic.

⁴⁸ Nicgorski, Nafziger 2009, pp. 269-270.

In 2004 the *Committee on Cultural Heritage Law of the International Law Association* (ILA) was founded, from a dissatisfaction concerning the legal principles that should govern indigenous claims. Courts do not adequately respond to the problems of evidence, ethics, and morality that typify these sorts of disputes. Many reported decisions display the awkwardness of applying generic legal rules about property to the unique and serious ethical, moral, and cultural dimensions typically involved. This perception has led many to propose alternatives to litigation in these cases, such as mediation or arbitration. Since 2004, the ILA has been working to prepare a set of *Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material* (the *ILA Principles*). The ILA Principles are designed to be a voluntary basis for parties exploring ways to resolve requests for the return of cultural material in a broad range of situations. Thus, they suggest a sort of minimum standard to which parties can agree in advance. Given the controversy surrounding the suitability of litigation in cases involving the return of cultural material, the ILA Principles contain a separate provision on dispute settlement that advocates the use of some form of alternate dispute mechanism (such as mediation or arbitration) over recourse to national courts. The ILA Principles do not, however, go so far as to eliminate litigation as an option because it can still sometimes expeditiously and imaginatively resolve difficult cases.⁴⁹

In 2011, ICOM launched, in cooperation with the *Arbitration and Mediation Centre of the World Intellectual Property Organization* (WIPO), its *Art and Cultural Heritage Mediation*.

It differs from the ICPRCP in that the UNESCO Committee offers procedures for mediation and conciliation, whereas ICOM-WIPO offers only mediation. The ICPRCP focuses on return and restitution of cultural objects, whilst ICOM-WIPO includes issues of insurance of artworks, loans, and even misappropriation of traditional cultural expressions. Besides, ICPRCP operates at an intergovernmental level, while ICOM-WIPO goes further: private parties can also apply for mediation.⁵⁰ According to the ICOM-WIPO website, art and cultural heritage disputes distinguish themselves from other disputes by their highly specific subject matter. In art or cultural heritage disputes legal and non-legal issues are intertwined; they require an understanding of every aspect of the dispute. In mediation all the intricacies of an art or cultural heritage dispute are addressed. The procedure takes into consideration several issues that will possibly be overlooked in litigation procedures, such as those of commercial, cultural, ethical, historical, moral, religious, or spiritual nature.⁵¹

⁴⁹ Nicgorski, Nafziger 2009, p. 379.

⁵⁰ Van Beurden 2017, p. 102.

⁵¹ *ICOM-WIPO Art and Cultural Heritage Mediation*, <http://www.wipo.int/amc/en/center/specific-sectors/art/icom/>, visited on 31-10-2018.

Chapter 2: Colonial history and restitution in the Netherlands

In this chapter, first the Dutch colonial history will be discussed. In the second paragraph, the national legislations that exist in the Netherlands concerning colonizer-looted art will be discussed. The last paragraph will elaborate on how, so far, Dutch heritage institutions have dealt with the restitution of colonizer-looted art.

2.1 Dutch colonial history

Around 1600, the Dutch Republic conquered Portuguese and Spanish settlements in Asia, Africa and South America and established settlements in these regions. They took over trade areas of other European countries and founded their own trade posts with which they opened up new trade areas. At some places large territories were occupied, while at other places the Dutch only opened up trading posts. When the Dutch East India Company (VOC, 1602-1799) and the Dutch West India Company (WIC, 1623-1792) were set up, they were charged with the administration of the new territories in Asia, Africa and Latin America. Apart from conquest, the Dutch made exploratory travels and discovered new sea passages where they set up new trade posts. Moreover, they put much effort into new ways of exporting goods to the Republic or inside Asia. During the second half of the seventeenth century the Dutch dominated much of the worldwide trade. From the second half of the eighteenth century on, France and England began to break the Dutch hegemony.

In 1815 the Kingdom of the Netherlands was established. At that time, only a few colonial possessions were left: the Indonesian archipelago, Surinam, and the Dutch Antilles. Other colonized areas and the trading posts were absorbed into the colonial possessions of other European powers. Indonesia declared itself independent on the 17th of August 1945.⁵² The Netherlands recognized the new state in 1949. Surinam gained independence in 1975. From October 2010 on, Aruba and Curacao became special countries within the Kingdom of the Netherlands, while Bonaire, Sint Eustatius and Saba received the status of special municipality.⁵³

⁵² Brinkgreve 2012, p. 155.

⁵³ Van Beurden 2012, pp. 30-31.

2.2 Legislation concerning colonizer-looted art in the Netherlands

It is important to first explain the different ways that an individual country can legally express agreement with an internationally established legislation.

First of all, a country can *sign* such a document. This is a means of authentication and it expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.

Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

Accession is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question.

The instruments of *acceptance* or *approval* of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state.⁵⁴

2.21 International cultural heritage legislations applied to the Netherlands

For the Netherlands, the developments concerning legislation of colonial art restitution started being important at the end of the nineteenth century. As discussed in more detail in chapter 1,

⁵⁴ *Glossary of terms relating to Treaty actions*, https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml, visited on 1 November 2018.

sometimes, occupying powers introduced legislation in their territories to protect indigenous cultural heritage against attempts of for instance scientists and collectors from other European countries to get hold of it. An example is an 1840 request by French researchers to get permission for a trip to Java and Borneo. The authorities in the Dutch East Indies formulated rules that declared temples, statues and other antiquities on the government's territory public property. The export of antiquities required the Governor General's permission. From 1844 onwards, lists of monuments were made. Besides, European powers set up museums in for instance Asia. An example is the museum of the Batavian Society for Arts and Sciences, as already mentioned in the previous chapter.⁵⁵

In the next chapter, the legislation mentioned in the previous chapter will be discussed concerning the case of the Singhasari statues. But before being able to do that, it has to be discovered if these legislations were accepted by the Netherlands. A list is to be found below:

The *Hague Regulations Respecting the Laws and Customs of War on Land* of 1899 was signed by the Netherlands.⁵⁶ The 1907 one was ratified.⁵⁷

The *Declaration of London* was signed by the Netherlands on 5 January 1943.⁵⁸

The Netherlands became a member of UNESCO on the 1st of January 1947.⁵⁹

The Netherlands accessed the *Convention on the Prevention and Punishment of the Crime of Genocide* on 20 June 1966.⁶⁰

In 1948 the Netherlands voted in favour of the *Universal Declaration of Human Rights*.⁶¹

The 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* was ratified by the Netherlands in 1958.⁶² The first protocol of 1954 was ratified in 1958 as well.⁶³ The second protocol of 1999 was accepted in 2007.⁶⁴

⁵⁵ Van Beurden 2017, p. 78.

⁵⁶ *Final Act of the International Peace Conference. The Hague, 29 July 1899*, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesSign&xp_treatySelected=145, visited on 1 November 2018.

⁵⁷ *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907*, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=195, visited on 1 November 2018.

⁵⁸ *Nederlandse noodwetten*, http://www.restitutiecommissie.nl/nederlandse_noodwetten.html, visited on 1 November 2018.

⁵⁹ *Member states list*, <https://en.unesco.org/countries/n>, visited on 1 November 2018.

⁶⁰ *Convention on the Prevention and Punishment of the Crime of Genocide*, https://web.archive.org/web/20121020233944/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-1&chapter=4&lang=en, visited on 1 November 2018.

⁶¹ *Growth in United Nations membership, 1945-present*, <https://www.un.org/en/sections/member-states/growth-joined-nations-membership-1945-present/index.html>, visited on 1 November 2018.

⁶² *States parties*, <http://www.unesco.org/eri/la/convention.asp?KO=13637&language=E&order=alpha>, visited on 2 November 2018.

The Netherlands voted in favour of the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples*.⁶⁵

The Netherlands was one of the founding members of the *League of Nations* on 10 January 1920.⁶⁶

On 17 July 2009 the Netherlands accepted the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.⁶⁷ This meant a major change in the position of the former owner, since these instruments – the 1970 Convention as well as the 1954 Convention and its protocols – have a preference for restitution of the misappropriated object to the original owner (or the original state), rather than for the legal validity of a bona fide acquisition, along with limitation periods that are much longer than usual.⁶⁸

On 26 August 1992 the Netherlands accepted the 1972 *Convention concerning the Protection of the World's Cultural and Natural Heritage*.⁶⁹

The Netherlands is not a member of the 1978 UNESCO *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation*.⁷⁰

On the 28th of June 1996 the Netherlands signed the 1995 UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects*.⁷¹

The Netherlands accepted the 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage* on the 15th of May 2012.⁷²

On 9 October 2009 the Netherlands accessed the 2005 UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*.⁷³

⁶³ *States parties*, <http://www.unesco.org/eri/la/convention.asp?KO=15391&language=E&order=alpha>, visited on 2 November 2018.

⁶⁴ *States parties*, <http://www.unesco.org/eri/la/convention.asp?KO=15207&language=E&order=alpha>, visited on 2 November 2018.

⁶⁵ *Declaration on the Granting of Independence to Colonial Countries and Peoples* New York, 14 December 1960, <http://legal.un.org/avl/ha/dicc/dicc.html>, visited on 2 November 2018.

⁶⁶ *First Assembly, Geneva, November 15- December 18, 1920*, <http://www.indiana.edu/~league/1thordinaryassemb.htm>, visited on 2 November 2018.

⁶⁷ *States parties*, <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha>, visited on 2 November 2018.

⁶⁸ Vadi, Schneider 2014, p. 67.

⁶⁹ *States parties. Ratification status*, <https://whc.unesco.org/en/statesparties/>, visited on 2 November 2018.

⁷⁰ *Members of the Intergovernmental Committee*, <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/intergovernmental-committee/members/>, visited on 2 November 2018.

⁷¹ *States parties*, <https://www.unidroit.org/status-cp>, visited on 2 November 2018.

⁷² *States parties*, <http://www.unesco.org/eri/la/convention.asp?language=E&KO=17116&order=alpha>, visited on 2 November 2018.

⁷³ *States parties*, <http://www.unesco.org/eri/la/convention.asp?KO=31038&language=E&order=alpha>, visited on 2 November 2018.

The in 2004 founded and in 2016 dissolved *Committee on Cultural Heritage Law of the International Law Association* (ILA) had two Dutch members: Ms. Sabine M. Gimbrere and dr. Nout van Woudenberg.⁷⁴

In 1975 the Netherlands became a member of the *World Intellectual Property Organization* (WIPO).⁷⁵

2.22 Historical overview of Dutch national cultural heritage legislations

Besides these international laws, the Netherlands has had and still has a number of national laws which are of importance to this research because these can explain why certain decisions have been made within the Netherlands about the return of cultural objects as opposed to, sometimes, international law.

The legislation will be discussed in chronological order and it will be mentioned if they are still in force or not.

In the 1960s to the 1980s a number of laws existed to protect the Dutch cultural heritage, such as the 1961 *Wet 200 houdende voorzieningen in het belang van het behoud van monumenten van geschiedenis en kunst*, which was replaced by a new law in 1989, and the 1984 *Heritage Preservation Act*.⁷⁶ However, these laws were made to protect cultural heritage within the Netherlands and not cultural heritage that belongs to other countries. Thus, these laws are not of much use to this research.

The *Act of 8 March 2007 containing rules on the taking into custody of cultural property from an occupied territory during an armed conflict and for the initiation of proceedings for the return of such property*, although no longer in force, is one of the first Dutch national legislations when it comes to the restitution of looted cultural heritage. In the act it states: “Whereas We have considered that it is necessary for cultural property coming from a territory occupied during an armed conflict to be returned to the competent authorities of the country of origin in order to comply with the Protocol of 14 May 1954 to the Convention for the Protection of Cultural Property in the Event of Armed Conflict and that it is desirable for this purpose to draw up rules that make it possible in appropriate cases to take such cultural property into custody and to bring proceedings for their return...”.⁷⁷

The *Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted in Paris on 14*

⁷⁴ List of Committee members, <http://www.ila-hq.org/index.php/committees>, visited on 2 November 2018.

⁷⁵ Netherlands, http://www.wipo.int/members/en/details.jsp?country_id=130, visited on 2 November 2018.

⁷⁶ UNESCO Database of National Cultural Heritage Laws visited on 4 November 2018.

⁷⁷ *Act of 8 March 2007*.

November 1970 Act 2009, although no longer in force, states: “Whereas We have considered that it is desirable to implement by statute the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970, Dutch Treaty Series 1972, no. 50 and 1983, no. 66) and in this connection to make amendments to, inter alia, the Code of Civil Procedure, the Civil Code and the Cultural Heritage Preservation Act; We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree...”⁷⁸

In 2015, the *Act of 4 June 2015 amending the Civil Code and several other laws to implement Directive 2014/60EU on the Return of Cultural Objects unlawfully Removed from the Territory of a Member State and amending Regulation (EU) No. 1024/2012* was implemented. In this act, several statements within the Dutch Civil Code and other laws were revisited.⁷⁹

On the 9th of December 2015, the *Act of 9 December 2015, Relating to the Combining and Amendment of Rules Regarding Cultural Heritage (Heritage Act)* was implemented. It stated: “Whereas We have considered that it is desirable to combine, structure, and simplify, the legislation in the field of cultural heritage, and also inter alia, to give the handling of museum collections legal form, to regulate the disposal of cultural objects in the possession of public authorities, and to modernise the system of quality assurance in archaeology; We, therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree...”⁸⁰ It is the first independent Dutch act on cultural heritage looted by the Netherlands, which was not based on already existing legislation. From this act, the *Heritage Act 2016* arose. It entered into force on 1 July 2016.

Besides the above-mentioned legislations, the Netherlands possesses the ‘Ethische Codecommissie’. It is based on the ICOM Code of Ethics 2004. Its task is to advise several organizations – as for instance the Museumvereniging, ICOM-Nederland – about the content and application of the Ethical Code for Museums.⁸¹

There are also three legislations in the Netherlands which specifically deal with the relationship with Indonesia. The first one is the *Agreement on cultural co-operation between the Kingdom of the Netherlands and the Republic of Indonesia* (1968), in force from 1970.

⁷⁸ *Act 2009*.

⁷⁹ *Act of 4 June 2015*.

⁸⁰ *Act of 9 December 2015*.

⁸¹ *Ethische Codecommissie*, <https://p.museumvereniging.nl/ethische-codecommissie>, visited on 6 November 2018.

The description is as follows: “The Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia, desirous of strengthening the existing bonds of friendship between the peoples of their countries, wishing to contribute through friendly co-operation in their respective countries to the attainment of a mutual understanding and knowledge on the widest possible scale, of their respective scientific, artistic and other cultural heritages, considering that it would be propitious to create a general framework within which such cultural co-operation could be achieved, have accordingly agreed as follows...”⁸²

The second legislation is the *Agreement on economic cooperation between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia* (1968), in force from 1995. The description states: The Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia, desirous of encouraging and intensifying economic cooperation between their countries to their mutual benefit, intending to create favourable conditions for investments by nationals of either State in the territory of the other State and to encourage such investments, have agreed as follows...”⁸³

Thirdly, there is the *Agreement on comprehensive partnership and cooperation between the European community and its member states, of the one part, and the Republic of Indonesia, of the other part* (2009), in force from 2014. The goal is described as offering a framework for a political dialogue, the supporting of efforts in the field of democratization and development and the liberalizing of trade and investments between the EU and the concerning country.⁸⁴

2.3 Colonizer-looted art restitution in Dutch heritage institutions

2.31 Materialized return cases

As mentioned in the previous paragraph, for the last few centuries the Dutch law enforcement authorities have shown their intention to stop the import, export and transfer of tainted art and antiquities to and from the Netherlands. This has resulted in a number of returns to claimant

⁸² *Overeenkomst inzake culturele samenwerking tussen het Koninkrijk der Nederlanden en de Republiek Indonesië*, Jakarta, 07-07-1968,

https://wetten.overheid.nl/BWBV0004208/1970-01-08#Verdrag_2, visited on 8 November 2018.

⁸³ *Overeenkomst inzake economische samenwerking tussen het Koninkrijk der Nederlanden en de Republiek Indonesië*, Jakarta, 07-07-1968, https://wetten.overheid.nl/BWBV0004240/1995-07-01#Verdrag_2, visited on 8 November 2018.

⁸⁴ *Kaderovereenkomst inzake een breed partnerschap en samenwerking tussen de Europese [...] enerzijds, en de Republiek Indonesië, anderzijds*, Jakarta, 09-11-2009, https://wetten.overheid.nl/BWBV0004075/2014-05-01#search_highlight1, visited on 8 November 2018.

countries. The implementation in the Netherlands of the 1970 UNESCO Convention in 2009 provided a stimulus for law enforcement authorities to put this intention further into practice. The returns of colonial objects and collections by Dutch heritage institutions can be divided into five categories: war booty, colonial collections, colonial archives, missionary activities and others. In the Netherlands, most of the colonial objects that were or still are in possession of heritage institutions derive from the Dutch colonial times in Indonesia.⁸⁵

An example of returned war booty is the Lombok treasure. Individual Dutch administrators and military personnel collected art objects during military expeditions and then took them home. Many of these objects were placed in the National Museum of Ethnology in Leiden. The Lombok treasure was gathered in 1894. The Royal Batavian Society kept most objects in its museum in Jakarta, and prepared others for shipment to the Netherlands. Most were delivered at the National Bank in Amsterdam, and some were distributed over Dutch museums. Among others, the Lombok treasure was exhibited in the Rijksmuseum in Amsterdam. In July 1898, part of the Lombok treasure was sent back to the Royal Batavian Society in Indonesia. In 1937 the Rijksmuseum handed in part of its Lombok art objects to the National Museum of Ethnology in Leiden.

The return operation of these artworks began in the end of the 1970's. The formal transfer took place in 1978. All in all, 243 Lombok artworks were returned to the Museum Nasional in Jakarta. Half of the artworks remained in the Netherlands based on the 1975 agreement – which will be discussed in the next chapter. These can be seen in the museum in Leiden. In the 1975 agreement, it was said that the Dutch government agreed with Indonesia that it would do its best to stimulate the private owners to hand over objects to Indonesia that they had taken in the colonial period and that could be linked directly to persons or events of great historical or cultural importance.

An example of the return of archives to former Dutch colonies is the one in 2010 to Surinam. In 2002, Surinam began to construct its own storage room for the archives, which the country didn't have before. In 2010 the new building was opened, and the return could begin.

In the nineteenth century, missionaries collected many ethnographic objects, which came to the Netherlands from Dutch and European colonial places. They did so out of curiosity or used them as teaching materials for new missionaries and for exhibitions for their own folks in the Netherlands. From around 1920 to the 1970's, around 250 exhibitions of these objects were held. In the 1990's, an investigation was done into the collections that missionary institutions had taken from colonial areas. One of the questions was about their

⁸⁵ Van Beurden 2012, p. 33.

thoughts on the return of its collections. Half of the respondents opposed it, the other half did not exclude it. However, only one return case of missionary colonial collections is known so far: The Order of the Capuchins in Tilburg, which was partly returned due to the working together with the Tropenmuseum in Amsterdam.

In 2002, during a visit to the Te Papa Museum Tongarewa of New Zealand, the Ethnographic Museum in Leiden was asked whether a return of a tattooed and painted Maori head, that was acquired in the colonial era, was possible. It had been New Zealand's policy to regain skulls that had been sold in the nineteenth century to European traders, and to pass them to Maori communities. The Ethnographic museum based its decision on two principles. For the question as how to deal with human remains and whether or not to exhibit them, the common practice in source countries was the norm. And the title of the offspring outweighed the formal property rights of a museum. The head was returned in 2006.

2.32 Non-materialized return cases

The Tropenmuseum in Amsterdam owns eight Indonesian Buddha heads, of which possibly four were taken from the ninth-century Buddhist Borobudur temple complex. In 2003, during a debate about the pillage of cultural heritage, the director Schenk was asked whether one of those four heads that was prominently shown in the museum, could go back to Indonesia. He answered: "In this case, theft or illicit trade is not under discussion. The object is the result of colonial collecting and the museum's ownership is reasonably legal..." He then continued that "...under certain conditions a return is possible, if Indonesia can prove where the head belongs, if the head then can be fixed and managed decently."⁸⁶ Shortly after the debate, the Rijksmuseum in Amsterdam was approached with the same question. The museum then pointed to the 2002 *Declaration about the Importance and Value of Universal Museums*. It said that the acquisition of objects in the past could not be considered the same as the illicit trade in art and antiquities today, which, according to the museum, meant that a return of the Buddha head was out of question. This is a very different reaction than the one of the Tropenmuseum, even though they both discussed the same type of objects with a comparable provenance. The National Museum of Ethnology in Leiden, owner of two Borobudur heads, has the same position as the Tropenmuseum.

In 2011, Taco Dibbits, director of the Rijksmuseum, replied to this case study. He said that he does not exclude a return of the Borobudur head. He wants to study return case by case and not have general rules on it.

⁸⁶ Van Beurden 2012, p. 57.

Another example is the return case of the keris of Indonesia's national hero Pangeran Diponegoro. It was taken by the Dutch army in 1830 when they invited him to come and negotiate under a flag of truce, but he then was taken prisoner. The story goes that three kerises of Diponegoro exist, of which one could be in the Netherlands. However, no one has seen it recently. When it is found, it is important to discuss the return of the keris.⁸⁷

Concluding, it can be said that from the start of the twenty-first century onwards, in the Netherlands the debate on return issues has been reaching a new peak in which return also covers categories such as cultural and historical art objects taken during colonialism. New national laws have made it easier to claim these objects for the countries of origin. Heritage institutions have defined their acquisition policies more sharply than in the past. Return is not excluded as an option anymore.

However, despite the conclusion that can be made that there is a change in thinking, this new view has remained un-translated into practice. Until now, the most important and large return since 1970 has been that of colonial objects to Indonesia and dates from 1977 and 1978.

Nowadays, most of the time heritage institutions wait for the requests for return to come their way, and not the other way around. A more pro-active attitude towards return is necessary.

⁸⁷ Van Beurden 2012, pp. 26-40.

Chapter 3: The Museum of Ethnology in Leiden and the case of the Singhasari statues

In this chapter, first the history of the Museum of Ethnology in Leiden is discussed briefly. The second part is about the Singhasari statues, what they represent and how they ended up in the Leiden museum. Then, the focus is on the 1974 restitution request by the Indonesian government concerning, among many others, the Singhasari statues and the Singhasari statues still being in the Museum of Ethnology in Leiden. Finally, the legislations that can possibly be used by Indonesia to claim back the statues from a legal perspective are researched.

3.1 The Museum of Ethnology in Leiden

The Leiden Museum of Ethnology has its roots in the Ethnographic Museum in Leiden, which opened in 1837. As early as 1597, during the first contacts between Dutch sailors and the population of Southeast Asia, manuscripts were collected and taken back to the Netherlands. What caught the attention of the collectors initially were the products of the old Asian civilizations. People were fascinated by the Hindu religion and its temples, which made Hindu statues in India and on Java the subject of scientific study and curiosity. Soon, manufactured goods, such as porcelain from China, were being shipped to Europe on demand. During the Enlightenment, learned societies such as the Batavian Society of Arts and Sciences (1778) were established. Their activities included the study of people and their material cultures. There were varied reasons to collect objects, such as the encyclopaedic interest of the colonizers, which led to the wanting of a collection concerning colonized peoples as comprehensively as possible. Besides, the encyclopaedic interest was widened to include the documentation of less spectacular aspects of the cultures of the subdued peoples than their religions, such as their ‘primitive’ day-to-day life. The aim of collections could vary from wanting to give a demonstration of the diffusion of cultural elements and of the historical relationships between particular cultures, to explicit educational aims.⁸⁸ The collectors, whether being travellers, artists, military men or civil officers, contributed a great deal to ethnological museum collections.

In the 1830s, the first specialised ethnographic museums were founded, mainly for scholarly reasons. One of the pioneers in this field was Philipp Franz Balthazar von Siebold (1796-1866), a German physician employed by the Dutch East Indies Army and stationed in

⁸⁸ Schefold, Vermeulen 2002, pp. 4-6.

Japan from 1823 to 1829. Due to his curiosity, Siebold wanted to establish a 'Japanese museum'. In order to acquire his objects, he would ask his Japanese patients to present him with 'ethnographic curiosities' in return for treatment. After he had returned to Europe in 1830, he started living in Leiden. His house on the Rapenburg was quickly stuffed with Japanese objects. The next year, he offered this collection to the Dutch state. After the collection had been sold, the question arose as to where the objects should be placed. Von Siebold had always wanted his objects to be placed in a separate museum, which was now possible.

Many of the collected objects from the Dutch East Indies arrived in the National Museum of Ethnology in Leiden. The Museum of Ethnology in Leiden, or Museum Volkenkunde, originated from the Ethnographic Museum in Leiden which opened in 1837. Although in its earlier decades the collections of the Leiden museum were predominately Japanese, from 1860 onwards the Indonesian collections grew. At the end of the nineteenth century these formed the larger part of the collection. This position was maintained, and even strengthened, in the further course of the history of the museum. The largest part of the Indonesian collection was brought together in the period before the Second World War, when Indonesia was still a Dutch colony. From 1935 onwards, the Museum of Ethnology is housed in the former Leiden academical hospital. From 2013 onwards, the museum is, together with the Africa Museum in Berg en Dal and the Tropenmuseum in Amsterdam, part of the National Museum of World Cultures.⁸⁹

3.2 The Singhasari statues

Although several Indonesian collections had already been brought together before 1860, these only became part of the museum at a later stage. An example are the Hindu-Javanese statues, particularly those from the temple of Singhasari.

In the year 1292 King Krtanagara of the Kingdom Singhasari on East Java, died under questionable circumstances. He was killed while feasting with his prime minister. An inscription of 1351 mentions the foundation of a temple in honour of the priests who lost their lives together with the king. Krtanagara had more than one burial temple. The Singhasari temple was at the site of his decease at Singhasari. The central room of the temple contains a base meant for representing Shiva. This god was surrounded by his usual companions divides over the cellas; Durga (north), Ganesha (back, east), Guru-Agastya (south), Nandishwara and Mahakala (in the niches on either side of the entrance, west). All of these statues are now in

⁸⁹ Schefold, Vermeulen 2002, pp. 81-83.

the Museum of Ethnology in Leiden, except for the Guru-Agastya.⁹⁰ Of these five statues, four of them were particularly requested back by Indonesia in 1974.

In Indonesia, Ganesha appears primarily as a member of a triad together with Bhatara Guru (Shiva as the divine teacher) and Durga, the inaccessible consort of Shiva in her demonic form of the bull-demon-destroyer. In innumerable *chandis* (old temples that have to do with Hinduism or Buddhism) of all sizes in Java, these three figures can be found placed in the three niches surrounding the actual cella: Durga on the north, Ganesha on the east, and Bhatara Guru on the south. This demonic form of Ganesha is particular to East-Java.⁹¹ The sculpture of Durga shows the goddess in the act of killing a bull-demon. She stands on the back of the bull which has already been wounded. The demon has left the animal and is shown above its head in a dwarf-like shape. Both the bull and the demon are richly decorated. Most attributes of the goddess herself are broken and have disappeared. Only her shield is still to be seen.⁹² Nandishwara and Mahakala are the two gatekeepers of the Shiva-temple. Nandishwara is always on the right side of Shiva. He looks quite young and functions as a leader of Shiva's entourage. The trident on his left side is the weapon of Shiva. In contradiction to his aggressive partner Mahakala, he represents the mild and positive aspect of Shiva. Mahakala, on the other hand, represents the destructive elements in Shiva's personality. This can be seen in the way he is sculpted: he looks muscular, stands straight and holds a club and a sword.⁹³

Nicolaus Engelhard, the Dutch colonial governor of the north-eastern coast of Java from 1801-1808, had discovered the small, decayed temple of Singhasari in 1803 in the forests of Malang.⁹⁴ He took seven statues of the Singhasari temple, which had become a ruin, and moved them to his garden in Semarang. From Semarang he took the sculptures to Batavia.⁹⁵ The first civil servant who decided to move Javanese cultural objects to the Netherlands, was professor C.G.C. Reinwardt. He was sent to the Dutch East Indies in 1816 by King William I, who was interested in the Hindu-Buddhist past of the colony, and saw to it that the Singhasari statues, together with many other cultural objects, were shipped to the Netherlands between 1819 and 1827. The statues, which later became world famous, were originally accommodated in the Leiden National Museum of Antiquities and were handed over to the National Ethnographic Museum in Leiden in 1903.⁹⁶ The transfer took place in the

⁹⁰ Kempers 1959, pp. 78-79.

⁹¹ Brill 1962, pp. 123-124.

⁹² Kempers 1959, p. 79.

⁹³ Collection Museum of Ethnology, Leiden, <https://collectie.wereldculturen.nl/#/query/89ac7e08-b46a-4fbc-96a2-ae934e47caf4>, visited on 22 November 2018.

⁹⁴ Brinkgreve 2012, p. 154.

⁹⁵ Vanvugt 2016, pp. 396-397.

⁹⁶ Schefold, Vermeulen 2002, p. 83.

context of a discussion on the relationship between the ethnographic and the archaeological museum in Leiden in the early twentieth century. A committee was formed in 1901 to discuss the position of the Ethnographic museum, as well as the ideal location for this museum. Both museums were represented in this committee, which eventually reached the following conclusion: “The antiquities of people of Northern Africa, Western Asia and Europe, whose civilization should be regarded as a predecessor to ours, must find their place in the Museum of Antiquities; all the rest in the Museum of Ethnography...”⁹⁷

3.3 The Singhasari statues: the restitution request and legal proceedings

3.31 The restitution request

After Indonesia’s independence from the Netherlands in 1945, the two countries had to redefine their cultural relations. Indonesia soon presented return claims and some Dutch high-ranking officials supported these claims. In 1949 a Round Table Conference took place on the transfer of sovereignty and the future relations between the two countries. However, this led to no returns.⁹⁸

Internationally the silence about colonial cultural objects was slowly being broken and the atmosphere was becoming more return-friendly, but still the Dutch government did not adjust its policy. It remained pro-active in the exchange of archives and other documents, but it was increasingly reluctant to the return of cultural objects, unless Indonesia came up with concrete requests. This was exactly what happened in the 1970s. Due to the arising of a debate in the Netherlands on the return of cultural objects to Indonesia and Papua New Guinea, the Indonesians felt encouraged. In September 1974 a large Indonesian delegation arrived at the Dutch Foreign Ministry and asked permission to visit all storage rooms for objects that had been taken during colonial times. Then, Dutch government officials started mapping the history of Dutch acquisitions and studied if the Dutch had committed any blameable acts. They provided lists of ten thousand objects to the Indonesian delegation, whose response was that all objects had to be returned. However, the Dutch feared that in this way the Dutch museums would fall empty. Early in 1975, the Dutch government declared that it was ready to intensify the cooperation to build up archives and museums in Indonesia. The Indonesian government replied that both sides should set up a team of experts to work on cultural relations and the return of objects. The Dutch accepted this proposal.⁹⁹

⁹⁷ Schefold, Vermeulen 2002, p. 87.

⁹⁸ Van Beurden 2017, p. 127.

⁹⁹ In the letter that was prepared for the Dutch team of experts it said that: “*The statement...that individual Dutchmen ‘rifled’ Indonesia...is not based on research or knowledge of the facts...*” and “*important objects or collections were not brought to the Netherlands, although there were, of course, exceptions.*” It was also

In November 1975 the two countries met in the Museum Nasional in Jakarta. In his opening address on the 10th of November, the Indonesian delegation leader, Professor Mantra, made a *Statement of the Indonesian Delegation on the Return of Cultural Objects*, in which he put Indonesia's claim in a context of cultural development, strengthening national identity and improving the overall economic political and social condition of the country which would enable the government to pay more attention to cultural development. The country needed cultural objects to improve existing museums and establish new ones. Indonesia did not ask for all the objects to be returned, but mostly the ones that were unique, a source of national pride and a fundamental contribution to the development of national consciousness of the history and population of the country. The statement listed three categories: cultural objects, historical objects and objects of aesthetic value.¹⁰⁰

The Dutch argued that many objects had been purchased or received as gifts, so these didn't point to illicit acquisitions. Some objects, such as the Lombok treasure, were, however, recognized as war booty. In the end, the countries agreed that Indonesia would receive a considerable number of artworks that could be linked directly to persons or events of great historical or cultural importance. On the 22nd of November 1975, the teams of experts agreed upon *Joint Recommendations by the Dutch and Indonesian Team of Experts, Concerning Cultural Cooperation in the Field of Museums and Archives Including Transfer of Objects*. Besides, a joint commission was set up to prepare a program for passing visual documentation about important cultural and archaeological objects. Lastly, the Dutch National Archive was to make copies of all archives material that were relevant for Indonesia.¹⁰¹

In June 1977 the second meeting followed, which was meant to implement the first stage of transfers. The third meeting, in 1978 coincided with the 200th anniversary of the National Museum in Jakarta. On this occasion, the Prajnaparamita statue was handed over and the team agreed upon a five-year plan for cultural cooperation.¹⁰²

In 2003 the Museum Nasional Indonesia and the National Museum of Ethnology in Leiden joined forces. Since their collections derive from the same sources – the Museum Nasional being the successor of the Batavia Museum – and the exchange and sharing of information and knowledge was not new for the museums – the Batavian Society for Arts and Sciences was the important knowledge institution in the former Dutch colony – working

admitted that museums had acquired "...the really valuable objects from the better sort of collections but since this happened throughout the world, returning any of these objects seems out of the question. This would mean depriving museums of their collections in a completely arbitrary way, and making any museum policy impossible." Van Beurden 2017, p. 137.

¹⁰⁰ Van Beurden 2017, pp. 140-144.

¹⁰¹ Van Beurden 2012, pp. 31-32.

¹⁰² Van Beurden 2017, p. 146.

together made good sense. Since 2004, three projects in which the two museums work together have started which aim to share knowledge, skills, collections, ideas and information. This was considered as a mutual benefit for both museums.

When the museum started working together with Indonesia in 2004, the case of the Singhasari statues was not reopened. According to Francine Brinkgreve, curator of the Insular Southeast Asia Collection of the National Museum of Ethnology in Leiden, the reason for this was that the Leiden museum did not want to risk the cooperation between the two countries and the two museums. The focus during the project was on the recovery of the disturbed relations between the countries during colonial times.¹⁰³

On the 19th of August 2005 an exhibition called 'Warisan Budaya Bersama' (Shared Cultural Heritage) opened. This was the first joint exhibition between the two parties. Within this exhibition, the Singhasari collections in both museums were an important theme. Five of the Singhasari statues that were in the possession of the Leiden Museum temporarily went back to Indonesia for this exhibition. While they were there, plaster casts of the statues were made for the Museum Nasional.

In 2012 a project started that again focused on the sharing of collections, but this time in a virtual way. It deals with the legendary past of Indonesia, when the last ruler of the Singhasari dynasty established the kingdom of Majapahit in the beginning of the fourteenth century.¹⁰⁴ Apart from this being important steps towards a better cooperation between the Netherlands and Indonesia and their national museums, the sharing of knowledge, skills and the other things mentioned above is not the same as the physical returning of objects. In 2012, the museum thought they did everything possible when it comes to restitution. However, nowadays, according to Brinkgreve, the Museum of Ethnology is becoming more and more pro-active towards restitution. For example, the museum is at present formulating a framework that makes it easier and clearer how former colonial countries can claim artworks back. Jos van Beurden was one of the participants of the team that supported this. According to him, it was not his goal to make the Singhasari statues go back to Indonesia per se, but that more info on the request that Indonesia did in 1974 was told with the statues in the museum. Brinkgreve agrees with this.

Other developments are also taking place within the museum. Their new head of research, Henrietta Lidchi, wants to be even more pro-active when it comes to the returning of looted

¹⁰³ Interview with Francine Brinkgreve, 1 February 2019.

¹⁰⁴ Brinkgreve 2012, pp. 155-156.

art. Besides, the museum is going to appoint a provenance researcher that focuses solely on researching the provenance of the art objects in the museums.¹⁰⁵

On the 7th of March 2019, the Nationaal Museum van Wereldculturen (which consists of four museums, of which the National Museum of Ethnology is one) published a list of principles and process for the claims for return of cultural objects.¹⁰⁶ By using these principles, the museum will discuss claims for return on objects from their collection. They will then advise the Dutch Minister of Education, Culture and Science, who will, as the owner of the collection, decide on what will happen with the object. Within these principles, a few decisions are made which show some very important developments within the world of colonial art restitution.

First of all, apart from the museum making clear how claims can be done and on what grounds they will be judged, the museum now also actively researches parts of their collection of which they assume they consist (partly) of looted art.

Secondly, the museum does not give demands as to how the conditions of the museums in the country of origin have to be. When it is said that the object should not be in possession of the Museum of Ethnology, it is not their task to decide how the object should be treated in the country of origin.

Thirdly, the principles cause countries to also claim artworks back due to their national, cultural or social importance for the country of origin.

The NMVW will set up a committee with external specialists who will discuss if the museum did the provenance research correctly and if the argumentations that the museum gives make sense. This committee will then advise the Minister of Culture on how to deal with the objects in question.¹⁰⁷ This publication will be discussed more extensively in the next paragraph.

In 1978, a ceremony took place in Leiden to commemorate the return of Indonesian artefacts to their country of origin. One of the returns was the Prajnaparamita statue, which, like the other statues, is a 13th century statue from Singhasari.¹⁰⁸ It was taken to the Netherlands by C.J.C. Reinwardt in 1923. The 13th century stone statue of the goddess of the highest wisdom was considered as one of the most beautiful cultural remains of the cultural heritage created by Indonesian artists in the ancient past. Assistant-administrator of Malang, D. Monnereau, had found it in ruins near Singhasari in 1818. It is not only seen as the most refined state from the classical period in Indonesian art history, but it also shows an important queen from old

¹⁰⁵ Interview with Francine Brinkgreve, 1 February 2019.

¹⁰⁶ <https://www.volkenkunde.nl/nl/over-museum-volkenkunde/pers/nmvw-publiceert-principes-voor-claims-koloniale-collecties>. Visited on 8 March 2019.

¹⁰⁷ *Return of Cultural Objects: Principles and Process Nationaal Museum van Wereldculturen 7-3-2019*.

¹⁰⁸ Schefold, Vermeulen 2002, p. 18.

Javanese history, Ken Dedes. These reasons give the statue both a great political and cultural value for Indonesia.¹⁰⁹

The other statues from Singhasari were, however, just as much wanted back by Indonesia as the Prajnaparamita statue. In the Statement of the Indonesian Delegation on the Return of Cultural Objects, mentioned in the previous paragraph, a lengthy description of the desired objects, the ‘Ganesh, Durga, Nadicwara and Mbakala statues’ and the Prajnaparamita statue were explicitly mentioned.¹¹⁰ Besides, a spokesperson of the Indonesian Embassy in The Hague claimed four Hindu-Javanese stone sculptures in Museum Volkenkunde in Leiden from the temple complex in Singhasari in Java. They are the property of the whole world, “...so there is no objection if copies are made. But the originals belong in Indonesia.”¹¹¹ According to Jos van Beurden, the Netherlands presented itself as a liberal and generous giver of colonial cultural objects, but the transfer of the Prajnaparamita enabled Museum Volkenkunde to keep the other Hindu-Javanese sculptures, even though Indonesia wanted these back as much as the other statue.¹¹² When reading about these statues in the catalogues from the National Museum of Ethnology, these details are not mentioned.¹¹³ According to Brinkgreve, the reason that Indonesia asked for some of the Singhasari statues in the long list of ten thousand objects specifically, is because the statues are icons of Hindu-Javanese architecture and are still in very good order. She also thinks that the Prajnaparamita statue is considered the most beautiful and important statue of the Singhasari statues. She sees the returning of the Prajnaparamita statues possibly as a compromise between the Netherlands and Indonesia and a way for the Netherlands to keep the other Singhasari statues. Another reason for the importance of the statues to Indonesia, is that the Singhasari kingdom was the predecessor to the kingdom of Majapahit, which is, for Indonesia, the start of the Indonesia Republic. Thirdly, the statues are unique in the sense that they are still a unity.¹¹⁴

3.32 A legal approach

In article 46 of the 1907 *Hague Regulations Respecting the Laws and Customs of War on Land*, which are still in force, it states that “*Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated*” and article 56 of the same treaty states: “*The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and*

¹⁰⁹ Brinkgreve 2012, p. 155.

¹¹⁰ Van Beurden 2017, p. 140.

¹¹¹ Ibidem 2017, p. 136.

¹¹² Van Beurden 2017, p. 168.

¹¹³ Konniger 2013, p. 100.

¹¹⁴ Interview with Francine Brinkgreve, 1 February 2019.

sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings". One would say that the Singhasari temple is a religious institution and is thus considered private property of Indonesia, which means that the taking of the statues from the temple was against this treaty. However, this treaty cannot be applied to this case study because of the first two articles of the regulations, which are: "*The Contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the laws and customs of war on land, annexed to the present Convention*" and "*The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting powers, and then only if all the belligerents are parties to the Convention*".¹¹⁵

The 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* is still in force. Both Indonesia and the Netherlands are state parties to the convention and ratified it in 1958, as well as the first protocol. Indonesia is not state party to the second protocol, while the Netherlands accepted the second protocol in 2007. The conclusion of this convention is that it is prohibited in the Netherlands to import or have in one's possession cultural property that was taken after 14 January 1959 from a territory occupied during an armed conflict. Because of the non-retroactivity of this legislation, it is not applicable to the case of the Singhasari statues – since these were taken before 14 January 1959.¹¹⁶

The same accounts for the Dutch *Act of 8 March 2007 containing rules on the taking into custody of cultural property from an occupied territory during an armed conflict and for the initiation of proceedings for the return of such property*. Section 2 states "*It is prohibited to import cultural property from an occupied territory into the Netherlands or to have such property in one's possession in the Netherlands*", but since this act is the Dutch application of the 1954 Convention and its protocols, 'occupied territory' is "*...a territory occupied on or after 14 January 1959 during an armed conflict, to which article 1 of the Protocol applies*", as stated in Section 1d.¹¹⁷

¹¹⁵ *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907*, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4D47F92DF3966A7EC12563CD002D6788>, visited on 7 January 2019.

¹¹⁶ *Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954*, http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html, visited on 7 January 2019.

¹¹⁷ *Act of 8 March 2007 containing rules on the taking into custody of cultural property from an occupied territory during an armed conflict and for the initiation of proceedings for the return of such property*,

The 1970 UNESCO *Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (implementation) Act* represents the implementation of the Netherlands of the 1970 UNESCO Convention. It embodies the legislation governing the import, export and return of cultural property and has no retroactive effect, which means that return procedures can only be started when cultural property has been illegally removed from a member state after 1 July 2009. Two things are important here; first of all, because of the non-retroactivity of this act, it cannot be applied to the Singhasari case, because the statues were taken before 1 July 2009. Besides, the cultural property has to be illegally removed from a member state in order to be returned, and Indonesia is not a member state to this convention, so this is another reason for this legislation to not account for this case study.¹¹⁸

On the 28th of June 1996 the Netherlands signed the 1995 UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects*, which is still in force. The same applies however to this convention as to the previous two conventions. In article 10, it states that:
“(1) *The provisions of Chapter II shall apply only in respect of a cultural object that is stolen after this Convention enters into force in respect of the State where the claim is brought, provided that:*
(a) *the object was stolen from the territory of a Contracting State after the entry into force of this Convention for that State; or*
(b) *the object is located in a Contracting State after the entry into force of the Convention for that State.*
(2) *The provisions of Chapter III shall apply only in respect of a cultural object that is illegally exported after this Convention enters into force for the requesting State as well as the State where the request is brought.*”

This means that the same two arguments apply as for the 1970 convention: the non-retroactivity and the fact that both parties have to be members of the convention cause that this legislation cannot be applied to the Singhasari case.¹¹⁹

On the 9th of December 2015, the Dutch *Act of 9 December 2015, Relating to the Combining and Amendment of Rules Regarding Cultural Heritage (Heritage Act)* was implemented. In section 6.3, which is called ‘Prohibition on import of illicitly exported or

http://www.unesco.org/culture/natlaws/media/pdf/netherlands/netherlands_actmarch2007_engtof.pdf, visited on 7 January 2019.

¹¹⁸ *Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (implementation) Act*,

http://www.unesco.org/culture/natlaws/media/pdf/netherlands/netherlands_implementationact_conv1970_memo.pdf, visited on 7 January 2019.

¹¹⁹ UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects*, <https://www.unidroit.org/instruments/cultural-property/1995-convention>, visited on 7 January 2019.

appropriated cultural property’, it says that: “*It is prohibited to import into the Netherlands cultural property which: a. has been removed from the territory of a State Party and is in breach of the provisions adopted by that State Party, in accordance with the objectives of the 1970 UNESCO Convention in respect of the export of cultural property from that State Party or the transfer of ownership of cultural property; or b. has been unlawfully appropriated in a State Party.*” Furthermore, section 6.7 (‘Claim for return’) states: “*The return of cultural property imported into the Netherlands in breach of the prohibition as referred to in Section 6.3 may be claimed, subject to Sections 1011(a) to 1011(d) of the Code of Civil Procedure [Wetboek van Burgerlijke Rechtsvordering], by proceedings brought by the State Party from which the property originates or by the party with valid title to such property.*” After this, in section 6.8 (‘Restriction on application’) it says that “*This section shall not apply if the breach of the provisions as referred to in Section 6.3(a) or the unlawful appropriation as referred to in Section 6.3(b) occurred prior to 1 July 2009.*” Due to these definitions, again this legislation cannot be applied to the Singhasari case. This continues to be clarified in sections 6.9 and 6.10.¹²⁰

This is repeated in the Dutch *Heritage Act* of 2016.¹²¹ The same restrictions concerning non-retroactivity and state party membership are in force which makes this act again not applicable to the Singhasari case.

¹²⁰ **Section 6.9. Definition of terms**

In this section, the following terms have the following meanings:

- a. Protocol: The Protocol of 14 May 1954 to the Convention for the Protection of Cultural Property in the Event of Armed Conflict done at The Hague on that date (Treaty Series of the Kingdom of the Netherlands 1955, 47);
- b. occupied territory: a territory occupied on or after 14 January 1959 during an armed conflict to which Article I of the Protocol applies;
- c. cultural property: cultural property as referred to in Article 1(a) of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (Treaty Series of the Kingdom of the Netherlands 1955, 47);

Section 6.10. Prohibition on import or possession of cultural property from occupied territory

It is prohibited to import cultural property from an occupied territory into the Netherlands or to have such property in one’s possession in the Netherlands.

Act of 9 December 2015, Relating to the Combining and Amendment of Rules Regarding Cultural Heritage (Heritage Act), http://www.unesco.org/culture/natlaws/media/pdf/netherlands/nl_heract_15_entof, visited on 7 January 2019.

¹²¹ **Section 6.1. Definition of terms**

In this section, the following terms have the following meanings:

- 1970 UNESCO Convention: Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted in Paris on 14 November 1970 (Treaty Series of the Kingdom of the Netherlands [Tractatenblad] 1972, No. 50 and Treaty Series of the Kingdom of the Netherlands 1983, No. 66);
- State Party: a state that has ratified the 1970 UNESCO Convention;
- cultural property: property which has been designated by each state, on religious or secular grounds, as being of importance for archaeology, prehistory, history, literature, art or science and hence of essential importance to its cultural heritage and which belongs to one of the categories of cultural property listed in Article 1 of the 1970 UNESCO Convention.

Section 6.3. Prohibition on import of illicitly exported or appropriated cultural property

It is prohibited to import into the Netherlands cultural property which:

The Ethische Codecommissie (the Dutch version of the ICOM Code of Ethics) offers an instrument for professional self-regulation in areas where the museum has its specific expertise and responsibility and where the national legislation is not or not enough existing.¹²² In museums and other cultural and heritage institutions matters can arise which are not dealt with in the existing legislation. That is why countries have composed ethical codes or guidelines to deal with these matters. However, as just said, it offers guidelines which are not legal binding restrictions. Besides, the guidelines mentioned in the Ethische Codecommissie can be interpreted in different ways, which makes that they wouldn't be a legal argument. However, they are worth mentioning since they do offer some important perspectives. Besides, the Museum of Ethnology in Leiden is a member of this committee. Important parts are the following:

2.3 Provenance and Due Diligence

Every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in, or exported from its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item since discovery or production.

-
1. has been removed from the territory of a State Party and is in breach of the provisions adopted by that State Party, in accordance with the objectives of the 1970 UNESCO Convention in respect of the export of cultural property from that State Party or the transfer of ownership of cultural property; or
 2. has been unlawfully appropriated in a State Party.

Section 6.7. Claim for return

The return of cultural property imported into the Netherlands in breach of the prohibition as referred to in Section 6.3 may be claimed, subject to Sections 1011(a) to 1011(d) of the Code of Civil Procedure [Wetboek van Burgerlijke Rechtsvordering], by proceedings brought by the State Party from which the property originates or by the party with valid title to such property.

Section 6.8. Restriction on application

This section shall not apply if the breach of the provisions as referred to in Section 6.3(a) or the unlawful appropriation as referred to in Section 6.3(b) occurred prior to 1 July 2009.

Section 6.9. Definition of terms

In this section, the following terms have the following meanings:

Protocol: The Protocol of 14 May 1954 to the Convention for the Protection of Cultural Property in the Event of Armed Conflict done at The Hague on that date (Treaty Series of the Kingdom of the Netherlands 1955, 47);

occupied territory: a territory occupied on or after 14 January 1959 during an armed conflict to which Article I of the Protocol applies;

cultural property: cultural property as referred to in Article 1(a) of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (Treaty Series of the Kingdom of the Netherlands 1955, 47);

Section 6.10. Prohibition on import or possession of cultural property from occupied territory

It is prohibited to import cultural property from an occupied territory into the Netherlands or to have such property in one's possession in the Netherlands.

Heritage Act 2016, <https://cultureelerfgoed.nl/sites/default/files/publications/heritage-act-2016.pdf>, visited on 7 January 2019.

¹²² *Ethische Code voor Musea*, p. 3.

2.5 Culturally Sensitive Material

Collections of human remains and material of sacred significance should be acquired only if they can be housed securely and cared for respectfully. This must be accomplished in a manner consistent with professional standards and the interests and beliefs of members of the community, ethnic or religious groups from which the objects originated, where these are known (see also 3.7; 4.3).

6.1 Cooperation

Museums should promote the sharing of knowledge, documentation and collections with museums and cultural organisations in the countries and communities of origin. The possibility of developing partnerships with museums in countries or areas that have lost a significant part of their heritage should be explored.

6.2 Return of Cultural Property

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, in preference to action at a governmental or political level.

6.3 Restitution of Cultural Property

When a country or people of origin seeks the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that country's or people's cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to cooperate in its return.

6.4 Cultural Objects from an Occupied Country

Museums should abstain from purchasing or acquiring cultural objects from an occupied territory and respect fully all laws and conventions that regulate the import, export and transfer of cultural or natural materials. Museums must conform fully to international, regional, national and local legislation and treaty obligations. In addition, the governing body should comply with any legally binding trusts or conditions relating to any aspect of the museum, its collections and operations.

7 Museums operate in a legal manner

Museums must conform fully to international, regional, national and local legislation and treaty obligations. In addition, the governing body should comply with any legally binding trusts or conditions relating to any aspect of the museum, its collections and operations.¹²³

As can be read above, especially in the last few sections, regulations do exist when it comes to illegally possessing cultural objects from occupied territories and the return of these objects. However, as can also be read, again reference is made to international, national and

¹²³ ICOM Code of Ethics 2004, <https://www.museumvereniging.nl/media/icom-code-en-web.pdf>, visited on 7 January 2019.

local legislation and as has already been made clear, most of those legislations cannot be used for the Singhasari case.

In the first few sections, terms as ‘culturally sensitive material’ and ‘sacred significance’ are used. One could definitely say that the Singhasari statues are of sacred significance and culturally sensitive to Indonesia, however, this is most likely not enough to convince the Museum of Ethnology to give them back.

In the *Agreement on cultural co-operation between the Kingdom of the Netherlands and the Republic of Indonesia* (1968), in force from 1970, the focus is on the cooperation between the two countries, also in artistic and other cultural ways.¹²⁴

The *Agreement on comprehensive partnership and cooperation between the European community and its member states, of the one part, and the Republic of Indonesia, of the other part* (2009), became in force from 2014. Again, the focus is on cooperation. The original text is in Dutch, so the parts here are translated by the author.¹²⁵

¹²⁴ **Article III**

With due regard for the relevant statutory regulations and government policy, each contracting party shall create opportunities for cooperation between its own and the other contracting party's scientific, artistic and other cultural institutes and shall promote the establishment and maintenance of such institutes in the other contracting party's territory.

Article IV

Each contracting party shall promote the dispatch to the country of the other contracting party of persons working in its country in one of the spheres mentioned in Article I and II and shall create conditions facilitating the reception, stay and activity in its country of persons sent out by the other contracting party in the context of the present agreement. Similarly, each contracting party shall encourage in its own territory artistic manifestations such as exhibitions, concerts and lectures pertaining to the culture of the other contracting party, and shall promote exchanges, interalia in the fields of scientific and other cultural literature, films and sport; and cooperation in film-production, radio and television programmes. *Overeenkomst inzake culturele samenwerking tussen het Koninkrijk der Nederlanden en de Republiek Indonesië, Jakarta, 07-07-1968*, https://wetten.overheid.nl/BWBV0004208/1970-01-08#Verdrag_2, visited on 7 January 2019.

¹²⁵ Original text:

Artikel 25. Onderwijs en cultuur

“1 De partijen komen overeen om, rekening houdende met hun verschillen, de samenwerking op het gebied van onderwijs en cultuur te stimuleren, teneinde het wederzijds begrip en de kennis van elkaars cultuur te vergroten.
2 De partijen streven ernaar om passende maatregelen te nemen om culturele uitwisselingen te stimuleren en gemeenschappelijke culturele initiatieven uit te voeren, waaronder de organisatie van culturele evenementen. In dit verband komen de partijen ook overeen de activiteiten van de Asia-Europe Foundation te blijven steunen.
3 De partijen komen overeen te overleggen en samen te werken binnen de relevante internationale fora, zoals de Unesco, en ideeën uit te wisselen over culturele diversiteit, waaronder ontwikkelingen zoals de ratificatie en implementatie van het Unesco-verdrag betreffende de bescherming en de bevordering van de diversiteit van cultuuruitingen.

4 De partijen zullen daarnaast de nadruk leggen op maatregelen voor de opbouw van banden tussen elkaars gespecialiseerde instellingen, de bevordering van uitwisseling van informatie en publicaties, kennis, studenten, deskundigen en technische middelen en de bevordering van informatie- en communicatietechnologieën in het onderwijs, daarbij zowel gebruikmakend van de faciliteiten van de Europese onderwijs- en cultuurprogramma's in Zuidoost-Azië, als de ervaringen die de partijen op dit gebied hebben opgedaan. De partijen komen ook overeen de uitvoering van het programma Erasmus Mundus te bevorderen.” Kaderovereenkomst inzake een breed partnerschap en samenwerking tussen de Europese [...] enerzijds, en de Republiek Indonesië, anderzijds, Jakarta, 09-11-2009, https://wetten.overheid.nl/BWBV0004075/2014-05-01#search_highlight1, visited on 7 January 2019.

In article 25, it is found important to have a mutual cooperation between the Netherlands and Indonesia. In this agreement as well as the 1968 one, however, nothing is said about how to deal with objects from Indonesia that are in possession of the Netherlands.

When applying the principles for addressing claims for the return of cultural objects, published by the NMVW on the 7th of March 2019, the following can be said about the Singhasari statues. Article 4 discussed the criteria for claims for return.

4. Criteria for Claims for Return

4.1 Cultural objects that will be considered for return will comply with one (or more) of the following criteria.

4.2 It can be shown that the cultural object(s) was collected/acquired in contravention of the standards of legality at the time. This includes but is not limited to cases where the cultural object was:

- 1. 4.2.1. Acquired from a possessor who acted in contravention of the standards of legality at that time and who did not have legal right to ownership of the cultural object(s);*
- 2. 4.2.2. Acquired from a possessor found since acquisition to have engaged in illegal practices relating to the ownership of cultural object(s).*

4.3 It can be shown that the claimants were involuntarily separated from the cultural object(s). This includes, but is not limited to conditions where the cultural object(s) was:

- 1. 4.3.1 Acquired without the consent of owners;*
- 2. 4.3.2 Acquired under conditions of duress that can be understood as forced sale;*
- 3. 4.3.3 Acquired from a possessor who was not culturally authorized to dispose of a particular cultural object(s), in that the customary/traditional context identifies the cultural object(s) as inalienable communal property.*

4.4 It can be shown that the cultural object(s) is of such value (cultural, heritage or religious) to nations and/or communities of origin that continued retention in the collection of the NMVW can be tested in relation to analogous standards articulated by The Heritage Act (Erfgoedwet) 2016 for Dutch national heritage and culture. This includes a cultural object(s):

4.4.1 whose sacred purpose make them unsuited to public display and continued scientific research;

4.4.2 whose relative national historical significance outside the Netherlands or influence on continuous cultural wellbeing outside the Netherlands outweighs all benefits of retention by the national collection in the Netherlands.

The aspects that are important here and where the committee should look into, are mainly those of legality (4.2) and heritage value (4.4). These can possibly make the committee consider a return of the Singhasari statues.

In the principles the guidelines for claims for return are also discussed.

5. Guidelines for Claims for Return

5.1 The claim will first be assessed in terms of where it falls into scope in accordance with the criteria (article 4) above.

5.2 Questions of legality (4.2.), involuntary separation (4.3) and heritage value (4.4) will be evaluated through detailed and responsive provenance research which will aim to trace the full history of acquisition and ownership of the cultural object(s). Claims should include all known and documented aspects including questions of ownership and history of possession; the connection between the claimant and the cultural object(s); cultural and national context and any potential rights and claims by other potential applicants.

5.3 In addition to applying criteria above (article 4) the following considerations will be taken into account when reviewing the claim:

- 1. 5.3.1 Standards of continued custodianship: the benefits of safeguarding cultural objects to ensure as far as possible they are used for cultural and heritage purposes when returned to the nations and/or communities of origin.*
- 2. 5.3.2 Cultural heritage and identity: the recognition that cultural objects may be indispensable to nations and/or communities in understanding and/or continuance of their origins, heritage, beliefs and culture.*
- 3. 5.3.3 Cultural continuity/genuine link: a demonstrable continuity/genuine link between the claimants and the cultural object(s) claimed, in terms of national heritage, persistence of beliefs, persistence of culture.*
- 4. 5.3.4 Just and fair solutions: this may include recommendations for models alternative to return that are acceptable to all parties – these might be exhibitions, loans, and sharing of information and knowledge on a number of platforms. This may include strategies for ongoing collaboration/relationship building.*

5.4 Unavoidable gaps and ambiguities may exist through absences arising from the nature of museum documentation and recorded histories. In claims that cannot be documented according to the guidelines listed above, the principle of reasonable doubt (see glossary) may be applied.

5.5 In keeping with NMVW's role as a custodian of a national collection, a claim should identify national government or national (cultural) institutional support, or overtly state why this is not applicable. NMVW may wish to confirm said support.

In the guidelines, mainly the cultural heritage and identity (5.3.2) and cultural continuity/genuine link (5.3.3) are important for the Singhasari case. Since the statues have a religious value, they are important to the country in understanding their heritage and culture and there is definitely a cultural continuity/genuine link between the claimants and the artworks claimed in terms of national heritage and persistence of beliefs.¹²⁶

¹²⁶ *Return of Cultural Objects: Principles and Process Nationaal Museum van Wereldculturen 7-3-2019.*

In the final part of this chapter it has become clear that there are no legal grounds that Indonesia can use to claim back the Singhasari statues. From the international legislations it becomes clear that these apply only to the looting of art done after the legislations were put to practice. Besides, Indonesia is not always a state party to the legislations, and it has to be one to make the legislations applicable to the country. However, according to Francine Brinkgreve, since the request in 1974 the Leiden museum has not received any official claim for return from the Indonesian government.¹²⁷ The museum is, though, becoming more proactive towards restitution and is open for negotiations when Indonesia does make a claim. This has become clear from the publication by the NMVW of the principles for claims for return on the 7th of March 2019. Even though these principles do not provide a legal basis for the return of colonizer-looted artworks, since it is not a hard-law legislation, they still offer countries a chance to make a claim more easily and provide the four museums within the NMVW with a framework which they can use when such a claim is made.

¹²⁷ Interview with Francine Brinkgreve, 1 February 2019.

Conclusion

This thesis addressed the question: Why are the Singhasari statues still in the National Museum of Ethnology in Leiden despite Indonesia asking them to be returned?

By studying literature and doing two interviews, the following conclusion can be drawn: there is no concrete answer found on the question why the statues have not been returned. There are, though, multiple causes that made and still make it difficult for Indonesia to get the statues back.

First of all, when analysing the legislations that exist concerning this type of looted art, both worldwide and in the Netherlands, it can be concluded that no legislation exists that Indonesia could use if they wanted to get the Singhasari statues back. The reasons for this are that the legislations only apply to lootings that have taken place after the legislations came into action, and because Indonesia is often not a state party to the conventions. Furthermore, the Dutch legislations that focus on the relationship between the Netherlands and Indonesia do not mention the looted artworks.

Secondly, when Indonesia did the request in 1974 the museum did respond to it by returning some artworks, like the Lombok treasure and the Prajnaparamita. But, according to Jos van Beurden, although the Netherlands presented itself as a liberal and generous giver of colonial cultural objects to their original owners, they tried to compensate keeping the four Singhasari statues with the transfer of the Prajnaparamita statue, even though Indonesia wanted these back as much as the other statue.¹²⁸

When Indonesia would nowadays make a claim for the Singhasari statues, however, there would be a chance that they would be returned. It has become clear that the Museum of Ethnology is open to discussing the return question of the Singhasari statues, but that there are many difficulties when it comes to evaluating the request. The museum does not argue that the country does not have the means to take care of the artworks in the way that the museum can take care of them or that less people will see the artwork when it is not in their museum but back in the country of origin, arguments that often are used by museums to oppose restitution. Jakarta has a very well-organised and developed museum, namely the Museum Nasional, which is very much capable of taking care of the artworks. Besides, this museum already existed in 1975 so back then it couldn't have been an argument either. Many people can also see the artworks when they are in this museum in Indonesia. Also, according to the principles for the claims for return published by the NMVW on the 7th of March 2019, when

¹²⁸ Van Beurden 2017, p. 168.

the committee has decided on the return of an artwork, this discussion is not the responsibility of the Leiden museum anymore.

As for the cultural and/or religious meaning artworks can have for a country and how they can lose this meaning while being in another country, this is difficult to establish in the case of the Singhasari statues. The statues were in the ruins of a temple, so they were not actively used as religious instruments anymore. However, Brinkgreve does mention how, when she visited the temple, people still brought sacrifices and presents to the temple which means that in a way it still has a religious meaning, whether it be the original Hindu-Buddhist meaning or a general religious significance. This spiritual connotation might be less now that the statues are not in their original surroundings. According to the principles for the claims for return published on the 7th of March 2019, this discussion is one of the criteria for the return of looted artworks.

Other points of discussion were whether or not artworks are sold legally or given away freely and the extent to which this can be researched nowadays. These points are not applicable to this case study since the Singhasari statues were taken from the ruins of the Singhasari temple.

Unfortunately, due to the length of this thesis not every discussion point, when it comes to colonial art restitution, could be discussed. One important question for this case study that needs more research is that since Indonesia was a Dutch colony, one could argue that the people taking the statues were not taking it from another country, so there is no legal ground to claim that it was not their property. Furthermore, it has to be researched to what extent the statues are war booty. It is certain that they were taken during a situation of unequal power relations, however, the question if colonialism is a war situation has to be researched more extensively. To get more clearance on this restitution question and to make it more accessible for Indonesia to do another claim, the answers to these questions need to be found. Other questions that need more extensive research, are to what extent the claim from 1974 is still valid and to what extent the case has ever been concluded. If it is still valid, this could be a reasonable start to another claim or the extension of the already existing claim for Indonesia.

Images

The image on the cover is made by the author herself.

The four images on this page are derived from the online collection of the National Museum of Ethnology, Leiden. <https://collectie.wereldculturen.nl/#/query/41630224-f8c6-4c20-8305-391e82d7a487>.



Image 1: Nandishwara.



Image 2: Mahakala.



Image 3: Durga.



Image 4: Ganesha.

Appendices

1. List of international legal instruments (directly) related to the return of cultural heritage objects

- 1648 Treaty of Westphalia
- 1815 Second Treaty of Paris
- 1815 Congress of Vienna
- 1863 Lieber Code
- 1874 Declaration of Brussels. International Declaration concerning the Laws and Customs of War
- 1899 and 1907 Hague Conventions on the laws and customs of war on land
- 1906 Antiquities Act
- 1919 Treaty of St. Germain
- 1919 Treaty of Versailles
- 1919 Covenant of the League of Nations. the International Committee for Intellectual Cooperation. (ICIC)
- 1921 Treaty of Trianon
- 1921 Treaty of Riga
- 1933 OIM Draft convention. 1932 Resolution
- 1935 Roerich Pact
- 1935 PAU Treaty
- 1935 Washington Treaty
- 1936 OIM Draft
- 1937 Cairo Conference
- 1938/1939 OIM Draft (Declaration)
- 1943 Declaration of London

- 1943 Inter - Allied Declaration against acts of dispossession committed in Territories Under Enemy Occupation or Control
- 1946 Paris Resolution
- 1947 Treaty of Peace with Italy
- 1948 Convention on the Prevention and Punishment of the Crime of Genocide
- 1948 Universal Declaration on Human Rights
- 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War
- 1954 Hague Convention for the protection of cultural property in the event of armed conflict (including first and second protocol, 1954)
- 1956 UNESCO Recommendation on international principles applicable to archaeological excavations
- 1960 UNGA Resolution. Declaration on the Granting of Independence to Colonial Countries and Peoples
- 1964 UNESCO Recommendation on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property
- 1966 International Covenant on Economic, Social and Cultural Rights
- 1966 United Nations' International Covenant on Civil and Political Rights
- 1969 (23 May) Vienna Convention on the Law of Treaties (VCLT), done at Vienna on 23 May 1969, in force 27 January 1980
- 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property
- 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage
- 1972 (16 November) UNESCO Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage
- 1973 *Conference of Heads of State or Government of Non-aligned Countries*
- 1973 *United Nations General Assembly Resolution 3187 (XXVIII)* on the Restitution of works of art to countries victims of expropriation
- 1973 UNGA Resolution 3187
- 1975 DR Congo submitted a watered-down Resolution 3391 on the Restitution of works of art to countries victims of expropriation

- 1976 report of the Venice Committee of Experts convened by UNESCO
- 1976 UNESCO Recommendation concerning the international exchange of cultural property
- 1976 Report of the Venice Committee of Experts, convened by UNESCO
- 1977 First and Second Additional Protocols to the Geneva Conventions of August 12, 1949
- 1978 UNESCO Recommendation for the protection of movable cultural property
- 1978 Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation. ICPRCP
- 7 June 1978 the Director-General of UNESCO launched *A plea for the return of an irreplaceable cultural heritage to those who created it*
- 1983 Convention on Cultural Property Implementation Act
- 1983 Vienna Convention on Succession of States in respect of State Property
- 1985 European Convention on Offences relating to Cultural Property
- 1986 ICOM Code of Ethics
- 1993: Erica Daes, the Rapporteur on Indigenous Rights for the Commission on Human Rights, developed the *Principles and Guidelines for the Protection of the Heritage of Indigenous People* (updated in 2000)
- 1993 Council Directive 93/7/EEC on the return of cultural objects removed unlawfully from the territory of a Member State
- 1993 U.N. Security Council Resolution 827
- 1993 Draft UN Declaration on the Rights of Indigenous Peoples
- 1994 (15 April) General Agreement on Tariffs and Trade (GATT 1994)
- 1995 UNIDROIT Convention on stolen or illegally exported cultural objects
- 1998 The Washington Conference Principles on Nazi-confiscated art
- 1998 Rome Statute of the International Criminal Court (ICC)
- 1999 Second Protocol to the Hague Convention
- 1999 (5 November) Resolution 1205 on Looted Jewish Cultural Property

- 2000 (5 October) Vilnius Forum Declaration
- 2001 UNESCO Convention on the protection of the underwater cultural heritage
- 2002 Statue of the international criminal tribunal
- 2002 (10 December) Declaration on the importance and value of universal museums
- 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage
- 2003 'Return of Cultural Objects unlawfully removed from the Territory of a Member State of the European Union Regulations'
- 2004 ICOM Code of Ethics
- 2004 Committee on Cultural Heritage Law of the International Law Association (ILA)
- 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
- 2006 ILA principles for cooperation in the mutual protection and transfer of cultural material
- 2007 the United Nations General Assembly finally adopted the United Nations Declaration on the Rights of Indigenous Peoples
- 2007 (8 March) Law on the Return of Cultural Property Exported from Occupied Territory
- 2011 ICOM in cooperation with the Arbitration and Mediation Centre of the World Intellectual Property Organization (WIPO); Art and Cultural Heritage Mediation
- 2011 (21 March) UN GA, HRC, Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed, UN Doc.A/HRC/17/38
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