

Terminology

“Restitution”

- in international law concerns **claims by States against one another**. According to UNESCO’s *IGC Guidelines for the Use of the “Standard Form Concerning Requests for Return or Restitution”* (1986, revised 1996, p. 11), “the term ‘restitution’ should be used **‘in case of illicit appropriation’**, i.e. when objects have left their countries of origin illegally, according to the relevant national legislations and with particular reference to UNESCO’s 1970 Convention on the subject”.
- For Wojciech Kowalski, Professor of Law at the University in Katowice (Poland), **Restitution** which originally emerged as a means of redressing the consequences of wartime plunder, is now used **as a remedy for theft**.
- Its applicability to cultural property taken in colonial times is questionable because of the differing views as to whether the taking was illegal in international law.

“Return”

- was chosen after the **1978 Dakar Meeting of Experts**, following the practice of the ICOM *ad hoc* Committee, in order to encourage returns by avoiding possible implications of illegality:
“The term ‘return’ should apply to cases where objects left their countries of origin prior to the crystallization of national and international law on the protection of cultural property. Such transfers of ownership were often made from a colonized territory to the territory of the colonial power or from a territory under foreign occupation. In many cases, they were the result of an exchange, gift or sale and did not therefore infringe any laws existing at the time. In some cases, however, the legitimacy of the transfer can be questioned. Among the many variants of such a process is the removal of objects from a colonial territory by people who were not nationals of the colonial power. There may have also been cases of political or

economic dependence which made it possible to effect transfers of ownership from one territory to another which would not be envisaged today.” (IGC, *Guidelines*, 1986, p. 11)

- **“Return” can be used** without political or legal implications, **on the basis simply of cultural co-operation and appropriate ethical standards**. It is also a useful term outside of the colonial context when it is unclear whether or not an international wrong has been committed by another State.

“Repatriation”, (“returning to the native land”)

- has the advantage of being equally applicable to the acquisition of cultural heritage items outside their country of origin by normal purchase without any activity on the part of the State in which they have been held.
- when talking about the return of cultural property to indigenous peoples, concerns two quite different legal situations. Because cultures are not co-extensive with nations, claims for repatriation to autochthonous peoples may be contained within one legal system, and thus become matters of internal or national law, or they may be claims against another state, and thus become matters of international law. The moral and cultural issues may be the same, but the legal context is quite different. (Prott, 1995)
- **In the American context, repatriation** is the process whereby human remains, funerary objects, sacred objects, and objects of cultural patrimony are returned to lineal descendants and culturally affiliated *federally recognized* Indian tribes, Alaska Native clans or villages, and Native Hawaiian organizations.
- for Kowalski, the term “restitution” gave rise to the concept of **repatriation** whose aim is to protect the integrity of national cultural heritage **in the event of cession of territory or break-down of multinational states**; the main criterion in attaining the aim is the territorial attachment of the heritage.

“Retrieval” and **“recovery”** can provide additional nuances to the discussion; recovery should not mean totality, and retrieval should be at the initiative of the country of origin.

“Re-assembly” and **“reconstitution”** of dispersed cultural heritages. The idea was expressed by the ICOM *ad hoc* Committee that requests for restitution would be regarded as more justified if the goal was to “reconstitute essential parts of a dispersed heritage” (ICOM, 1977, pp. 2, 4, 10, cited by O’Keefe and Prott, p. 837)

‘Cultural heritage’ encompasses a wide range of cultural manifestations from the transient, perishable and movable through to the immovable and implies the notion of transmission from one generation to another. The term **‘cultural property’** places emphasis on the property law aspects of cultural expressions. It often privileges one characteristic of the object to the detriment of others. **‘Cultural object’** has often been used as a compromise.

The concept **“the return of cultural property”** involves claims for cultural property to be returned to the country of origin, whether such property was taken from former colonies or illegally exported. Both instances are considered to be negative phenomena, however, legal opinions vary.

Sources:

- ***Guidelines for the Use of the “Standard Form Concerning Requests for Return or Restitution”***, Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or Its Restitution in Case of Illicit Appropriation, UNESCO, 1986 (Revised 1996).
- **Kowalski, Wojciech**, “Types of Claims for Recovery of Lost Cultural Property,” in Czubek, Grazyna and Kosiewski, Piotr (eds.), *Displaced Cultural Assets: The Case of Western Europe and the Problems of Central and Eastern European Countries in the 20th Century*, Warsaw: Stefan Batory Foundation/Publishing House TRIO, 2004; reprinted in *MUSEUM International*, ‘Protection and Restitution’, no. 228, vol. 57, no. 4, Paris: UNESCO, 2005.
- **National Museum of the American Indian website**
- **O’Keefe, P.J. and Prott, L.V.** *Law and the Cultural Heritage*: Vol. 3: “Movement”, London: Butterworths, 1989, pp. 826-838.
- **Prott, L.V.** “Repatriation of Cultural Property”, *University of British Columbia Law Review, Special Issue: Material Culture in Flux: Law and Policy of Repatriation of Cultural Property*, 1995.