

A legal analysis on the treatment of cultural property: Special reference to the 1638 Westerwolt Treaty in light of the contemporary Dutch restitution process

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The 1638 Westerwolt Treaty between the Dutch VOC and the King of Kandy was premised on the understanding that the Dutch would expel the Portuguese from Ceylon in exchange for significant trading advantages in Ceylon. Though this treaty was considered binding and legal, some historians are of the view that certain disparities in translation and interpretation reveal an intention to misrepresent certain provisions to favour the Dutch. Therefore, this treaty can be considered an *unequal treaty* that resulted in favouring the Dutch while significantly reducing the sovereignty of the Kingdom of Kandy. The treaty contained provisions on the taking and division of war booty. While both parties were equally motivated in this regard, historical records and certain events that took place seem to indicate that the Dutch were more active in this endeavour. The research aims to identify and analyse the principles, concepts, and practices in the 1638 treaty regarding the treatment of cultural property. This research employs both doctrinal and socio-legal methods of inquiry. Furthermore, desk-based investigations are the primary data collection method, while empirical methods such as expert interviews are used to shed more light on this novel area of research. Findings reveal that even though none of the provisions in the 1638 treaty explicitly dealt with the term ‘*cultural property*’, the broader term ‘*war booty*’ referred to in the treaty could be said to include cultural property. This is useful for countries of origin of cultural property in formulating substantial legal arguments to claim ‘*justice*’ in the restitution process of the Dutch Government (as manifested in its Restitution Policy), which is currently lagging behind in legal considerations.

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