

Decolonizing Heritage. The Return of Cultural Objects to Africa: An International Law Perspective

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Conference Report

I. Introduction

The conference was opened by **Prof. Bénédicte Föex**, Dean of the Faculty of Law of the University of Geneva. During the colonial period, numerous cultural objects were illegally removed from the African continent and taken to Western countries. Today, the return of these cultural objects to Africa is an issue of great importance from an international law perspective. In this context, several issues arise and many questions are raised: what types of objects should be returned? To whom should they be returned? Should the bona fide purchaser be protected? Should there be a time limit for the return of these objects?

If international law instruments, such as the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 (hereinafter “1970 UNESCO Convention”) and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995 (hereinafter “1995 UNIDROIT Convention”) can provide an answer to some of these issues, they will unfortunately not provide an answer to all of them. The present conference should therefore provide an opportunity to understand the legal issues involved and to resolve them, in part, through discussion.

H.E. Mr. Coly Seck, permanent representative of the Republic of Senegal to the United Nations in Geneva, explained that the art objects discussed in this conference are bearers of a history and a culture. As the first President of the Republic of Senegal, Mr. Léopold Sédar Senghor, said that “Culture is at the beginning and the end of all development”. Since then, the Republic of Senegal has set up high-level infrastructures, including a Museum of Black Civilizations, with an important collection on African art. The idea today is to allow the African people to rediscover a part of their identity and to engage in a profound reflection on the safeguarding of their cultural heritage.

Prof. Felwine Sarr of Duke University, Anne-Marie Bryan Chair in French and Francophone Studies, closed the introductory part with his keynote address.

In November 2018, Prof. Sarr and Prof. Bénédicte Savoy delivered the “Report on the Restitution of African Cultural Heritage. Towards a New Relational Ethic” (hereafter “Sarr/Savoy Report”), a study commissioned by the President of the French Republic, Mr. Emmanuel Macron, following his announcement in Ouagadougou on 28 November 2017 that he wanted to return African art objects looted during the colonial period that are in French museums. The publication of the Sarr/Savoy Report opened an important debate in Europe and Africa on the issue of the return of colonial objects to African countries. Prof. Sarr, however, recalled that this issue is not new and that requests for restitution have already taken place long before. Unfortunately, with the exception of a few cases, these requests have often remained unheeded. The latest was Benin’s request in 2016 to France. Although admitting the legitimacy of Benin to obtain the restitution, France refused it, invoking the principle of inalienability. Thus, the question of restitution is a complex issue involving political, symbolic, philosophical and relational considerations.

Prof. Sarr raised the question of the role that cultural heritage can play for African youth in a context of reconstruction of the continent. According to him, reappropriating one’s history allows one to develop a new imagination of the future, to rebuild one’s self-esteem and to be part of a long tradition of creativity and creation of meaning. In other words, the restitution of these works would allow the African people to recover part of their memory and identity and would open up spaces for young Africans to create, imagine and reinvent African societal and political spaces. As the historian Lynn Hunt has said, “Historical truth is never free from threats”. It is therefore important to understand the context in which African cultural heritage was plundered and transferred to Europe. Thus, a work of reappropriation of this past by the African populations is necessary. In this context, the work of memory functions as a key element of reconstruction. The return of emblematic objects can play a role in this process.

Another issue is the translocation and transformation of African colonial objects. As these objects have long been absent from their countries of origin and have undergone several successive processes of re-semanticization, it is questionable whether they will be able to regain a place in their original societal environment. Moreover, these places of origin have often themselves undergone profound changes. How then can we return these objects to their former meaning and function without neglecting the fact that they have been remodelled for more than a century at the semantic, symbolic and epistemological levels? Sometimes it will be necessary to reinvest them with a new social function, to re-socialize them. The idea is therefore not to return the “same” object, but another “same”. In communities where these objects have continued to live through rituals and traditions, they can easily find a function (even if reinvented). On the other hand, in communities where the memory has been erased, this work of re-socializing the objects will be more difficult.

African countries will thus have to perform a double task: (1) reconstitute their memory and (2) reinvent their cultural heritage, through the re-semanticization and re-socialization of returned objects. Africans will have to define their own notion of cultural heritage and the re-socialization of African colonial cultural objects will have to be done in different configurations through dissemination in the social space (universities, museums, art centers, schools, in the heart of communities, etc.). In this respect, the role of the museum should also be rethought.

Prof. Sarr also evoked the fact that for many African communities, the objects demanded are animated subjects, mediators between different orders of reality, and not simple material objects. Thus, in some African societies, statues also die and some masks are buried after a few years of life and then reproduced in order to keep their vital influx. They are thus the expression of the continual mutation called life. The need for periodic repair is thus inscribed in their identity.

Finally, Prof. Sarr pointed out that the question of these objects as material traces of history has been at the heart of the debates on the restitution of African cultural heritage. But what about intangible traces (songs, stories, etc.)? These traces cannot be looted, but they can still be lost. Nevertheless, it is true that colonial violence has focused on the materiality of objects. Immateriality seems, in part, to have escaped this violence. It is therefore through these immaterial traces and their transmission that the substratum of African culture has survived and has been propagated from generation to generation.

To conclude, Prof. Sarr explained that these objects, products of the relational history between Europe and Africa, are today ready to serve as mediators of a new relational ethic between the two continents through exchange and, why not, through loans between museums.

II. The challenges of returning cultural objects

The first panel was chaired by H.E. Kadra Ahmed Hassan, Permanent Representative of the Republic of Djibouti to the United Nations, who introduced the four speakers.

A. The African Union: policy and action for the return of cultural objects

H.E. Dr. Namira Negm, Legal Advisor and Director of the Office of Legal Affairs of the African Union (AU), was the first speaker in this panel. She began by pointing out that the importance of preserving African culture and heritage has been demonstrated by the AU through various key decisions and strategies such as the 1980-2000 Lagos Plan of Action and the 2063 AU Agenda. In addition, the Organisation of African Unity and the AU (OAU/AU) have adopted various legal instruments that emphasise the importance of art, culture and heritage. These include the 1978 Cultural Charter of Africa, which calls for the legal protection of African cultural heritage and for African States to take steps to

stop the looting. The Charter for African Cultural Renaissance, adopted in 2006, is another legal instrument whose Article 26 provides that African States should take the necessary measures to stop the looting of and illicit trafficking in African cultural objects and to obtain restitution of cultural objects. However, this Charter does not specify which measures are to be taken in concrete terms. In this regard, there is also the Statute of the African Audiovisual and Film Commission adopted in 2019 and the AU Model Law on the Protection of Cultural Property and Heritage of 2018. The latter applies to the protection and preservation of cultural heritage items in AU member states, based on the model of the 1970 UNESCO Convention. Article 27 of the AU Model Law provides African States with the means to seek the restitution of stolen or illicitly exported movable cultural objects at any time and against anyone (even a bona fide purchaser). Unfortunately, several of the above-mentioned legal instruments expressly recognize that many African cultural objects were looted and removed from the African continent under the colonial rules in force at the time. According to the Sarr/Savoy Report, 90-95% of African cultural heritage is still held outside the African continent today.

Despite all the legal instruments in place, it is very difficult to secure the return of colonial objects to Africa. Many Western museums have refused to return pieces on the grounds that these will not be well preserved in African states. Several States and private auction houses have also refused to cooperate with diplomatic requests from African States to have their looted cultural objects returned.

Specific challenges include the fact that AU legal instruments (notably the 2006 AU Charter, which has limited provisions and is not yet in force, and the AU Model Law) do not provide a binding legal basis, but rather a guide for States to adopt national legislation. Second, the burden of proof for looting still lies with the claimants, complicating the restitution process since the claimed objects are located in Western states. In addition, some Western museums claim that many African States do not have the security guarantees necessary to prevent looting of the objects forming part of their collections and of the recovered objects if returned. Thus, the difficulty of return is also seen to be related to considerations of capacity and financial resources. Another challenge is that experts are needed for each art period to determine whether or not the requested pieces are from the colonial times. Finally, ensuring the authenticity of the pieces at a time when the replica market is booming is a daunting exercise to add to the already existing challenges of return requests.

In conclusion, H.E. Negm noted that the current AU legal framework for the return of colonial cultural objects is not yet strong enough to meet the challenges faced by African States seeking the return of their cultural objects. She therefore proposes to launch more programs to secure the return of African cultural objects, to reverse the burden of proof in favour of the claimant (so that the defendant has to prove that the object was acquired legally, as is already the case with illicit organized crime activities),

and to establish genuine international cooperation among States to secure the return of colonial objects to Africa.

B. The unfinished agenda of decolonization in relation to the return of cultural objects removed during the colonial period: policy and practice of African States

According to **Mr. George Abungu**, a consultant and fellow at the Stellenbosch Institute for Advanced Study, heritage is important because it is about people and reflects cultural diversity. Therefore, sharing heritage is a necessary condition for the creation of an international partnership as advocated by UNESCO. However, sharing is not possible when property is acquired by force. Furthermore, heritage is linked to national identity and is therefore of even greater importance in the territory where it originates. Africans “live their heritage”, which should not only be confined in museums (be they Western or African).

Mr. Abungu returned to historical truths such as the looting and theft of African cultural objects. This problem belongs both to the past and the present, as the illicit trafficking of cultural objects continues to this day. Westerners have so far justified looting and plundering by saying that they wanted to learn about African culture and teach it to others. Today, demands for return are intended to redress some of the historical injustices of colonialism.

Despite restitution policies, legislation, and practices, many African countries still do not have an appropriate legal framework and policies in place to specifically address the return of their cultural objects. Furthermore, there is still too often a lack of ratification of the relevant international instruments (i.e., the 1970 UNESCO Convention and the 1995 UNIDROIT Convention) by African states. This is regrettable since the integration of these conventions by African States into their domestic legal systems constitutes one of the main tools for ensuring the return of colonial cultural objects.

The claims by many African States of their looted cultural heritage is not a new phenomenon, but rather a movement that began even before the decolonization process. Some objects have been returned to African states, notably by Germany, the United States, Switzerland, and France, but always on an ad hoc basis according to political motivations.

President Macron’s proclamation in Ouagadougou was innovative in that it moved the subject of the return of African cultural objects away from political rhetoric and academic dialogue and into the legal sphere. Governments are now looking at what needs to be done to ensure a successful return and what conditions are required to do so.

At the continental level, the AU has now recognized that culture, heritage and the arts are essential to the development of the African continent and has identified illicit trafficking as a threat that needs to be urgently addressed. An AU Model Law on the Protection of Cultural Property and Heritage is being developed to assist African countries in adopting relevant laws and putting in place appropriate policies to combat illicit trafficking in cultural objects and promote arts, culture and heritage for sustainable development. The Economic Community of West African States (ECOWAS) also addresses this issue. African governments are encouraged by UNESCO to ratify the 1970 UNESCO Convention. Through this convention and the 2015 UNESCO Recommendation concerning the Protection and Promotion of Museums and Collections (hereinafter “2015 UNESCO Recommendation”), States parties seek to strengthen their institutional and legal frameworks, obtain assistance in preparing and submitting standard forms to the UNESCO Intergovernmental Committee for the Promotion of the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP), create a national inventory of protected public and private cultural objects, and conduct preventive conservation of cultural objects kept in museums.

C. The 1995 UNIDROIT Convention and colonial heritage

The third presentation of this panel was given by **Ms. Marina Schneider**, Senior Legal Officer and Treaty Depositary at UNIDROIT, who introduced the 1995 UNIDROIT Convention, the only international instrument entirely devoted to the issues of restitution of stolen cultural objects and return of illicitly exported cultural objects. According to Article 5 of the 1995 UNIDROIT Convention, the return of illicitly exported cultural objects is possible in case of violation of State legislation prohibiting export and significant harm to one of the interests listed in Chapter 3. It should also be noted that this Convention provides special protection for archaeological objects used in a traditional or ritual manner by a tribal or indigenous community. Thus, it is not only the financial value of the object that is decisive for requesting its return, but also its importance for a community.

Ms. Schneider recalled that it is important to have an international legal instrument that offers uniform solutions in the matter of return, as proposed by the 1995 UNIDROIT Convention, all the more so when national laws on the subject diverge. In other words, it is not acceptable that the return depends on the national legislation of the place where the object is located, especially since looters and traffickers, know how to select the regimes that will be more favourable to them.

The 1995 UNIDROIT Convention does not apply retroactively. According to Article 28 of the Vienna Convention on the Law of Treaties (hereinafter “Vienna Convention”), the provisions of a treaty do not bind a party in respect of events occurring prior to its entry into force for that party, unless a different intention is apparent from the treaty itself or is otherwise established. It is clear from the Preamble, as

well as from Article 10 of the 1995 UNIDROIT Convention, that the latter applies only to cases where a cultural object has been illegally exported after the entry into force of the Convention in respect of the requesting State and the requested State. Nevertheless, the Preamble states that the 1995 UNIDROIT Convention establishes only common minimum legal rules and it follows from Article 9 that Contracting States remain free to apply more favourable rules for the return of cultural objects.

However, non-retroactivity does not mean non-legitimacy in making return requests. The preamble expressly states that “in no way [the 1995 UNIDROIT Convention] confers any approval or legitimacy upon illegal transactions of whatever kind which may have taken place before the entry into force of the Convention”. Moreover, according to Article 10, the Convention does not limit the right of States and natural persons to avail themselves of other actions. African States are therefore perfectly entitled to make claims for the return of colonial objects.

If the 1995 UNIDROIT Convention does not apply retroactively, then one may ask how it is relevant to the return of cultural objects looted in Africa during the colonial period. In the words of the Sarr/Savoy Report, it is a question of guaranteeing the durability of restitutions and reinforcing the fight against illicit trafficking.

States must therefore develop two parallel actions: reflect on a strategy and policy for the restitution of objects looted during the colonial period (notably by creating a legal relationship in which both parties are motivated by the desire to obtain mutual cultural benefits) and prevent the theft or illicit export of cultural objects that are still in the country.

Ms. Schneider pointed out the imbalance that exists with regard to requests for return from EU member States to each other and from African countries to EU member States. Indeed, the EU member States have, for years now, developed an effective system for restitution and return requests between them (e.g. Directive 2014/60). Unfortunately, these regulations only apply within the EU, with the result that requests for the return of cultural heritage from African States to EU member States are often not met (notably due to the principles of protection of the bona fide purchaser and the principle of territoriality of public laws).

Ms. Schneider also outlined several reasons why African States should ratify the 1995 UNIDROIT Convention. First, the 1970 UNESCO Convention (to which seventeen African States are not yet party) has weaknesses in certain aspects of private law. Second, the 2014 study on the development of cooperation activities between the EU and Africa on cultural objects indicates that the non-ratification of the 1995 UNIDROIT Convention by African States already party to the 1970 UNESCO Convention would discredit their membership of the latter. Third, the Sarr/Savoy Report argues that the 1995

UNIDROIT Convention is the only instrument that could redress the current imbalance between the EU and Africa. Its ratification by African States would put restitution on a sustainable footing, not least because Directive 2014/60 has itself drawn heavily on the 1995 UNIDROIT Convention (it now provides for a time limit for initiating return proceedings, has shifted the burden of proof in favour of the claimant, and has incorporated due diligence criteria into its text). EU member States would therefore no longer be able to justify the application among themselves of mechanisms that they deny to other countries, even though both are parties to instruments that have the same objective, namely facilitating the return of illegally exported cultural objects. Fourth, the 1995 UNIDROIT Convention has also had an impact on those States that have not ratified it, such as the Netherlands, Switzerland and Germany. Finally, ECOWAS, which has adopted a 2019-2023 action plan for the restitution of African cultural objects to its countries of origin, has recommended that African States ratify the 1970 UNESCO Convention, as well as the 1995 UNIDROIT Convention (to which twelve African States are already parties and three signatories).

In conclusion, Ms. Schneider quoted an Ethiopian proverb that “[o]ne cannot build a house for last year’s summer”, meaning that States must adopt an effective legal framework as soon as possible for the return of illicitly exported cultural objects.

D. The return of colonial objects and international law

Dr. Alessandro Chechi of the University of Geneva presented the question of the return of colonial objects from the perspective of international law. He started by reviewing the historical context of the illicit export of African cultural objects during the colonial era and recalled that colonialism was also a matter of looting of cultural heritage. This looting and illicit appropriation took place during military operations, private scientific expeditions, missionary collections, donations, purchases or barter.

Then, Dr. Chechi explained that the notion of civilization is central to understanding the role that international law played during the colonial era. Indeed, as David Lowenthal said in 1997, “European mandates to plunder stemmed from the common view that their Christian and scientific legacy was immeasurably superior to the barbarous customs of others”. This racist and dehumanizing vision of civilization was the real reason for the looting that took place during this period. In addition, a great part of the scientists and jurists of the time such as Francisco de Vitoria, Hugo Grotius or Emerich de Vattel were accomplices of these pillages. Moreover, the instruments and principles of international law (such as the prohibition on looting cultural objects) did not apply to non-European territories and their inhabitants.

Dr. Chechi then recalled the crux of the problem, which is the doctrine of inter-temporality, which provides that the facts are assessed according to the norms in force at the time they occurred. Dr. Chechi listed some of the tools of international law that should help in obtaining the return of colonial cultural objects. First of all, one can think of treaty law. For example, bilateral treaties can be adopted to facilitate the return of colonial objects, as was done between Italy and Ethiopia regarding the Aksum Obelisk. This possibility is envisaged by the 1995 UNIDROIT Convention and the 1970 UNESCO Convention. Secondly, one can think of the ICPRCP, which plays an important role as an advisory body and assists UNESCO Member States in resolving disputes that are not covered by existing non-retroactive treaties. It should also be noted that this Committee has recently been tasked with the mandate to resolve disputes through negotiation and mediation. The third innovative tool mentioned is the combined use of the prohibition of the use of force and the right to self-determination of peoples. These principles have been used together for the first time in the 2008 judgment of the Italian Consiglio di Stato in the Venus of Cyrene case, where the Italian court held that States have an obligation under customary international law to return all objects that were removed with the use of force during military occupation to allow (previously subjugated) peoples to enjoy their right to self-determination which includes the right to cultural heritage.

In conclusion, Dr. Chechi emphasized that international law offers various tools for dealing with African states' claims for return. However, all of these tools remain subject to the well-known public international law principle of State sovereignty. Thus, requests for return remain to this day subject to the consent and therefore the will of the States to which the requests are addressed.

III. A panorama of practical solutions

The second panel was chaired by Prof. Marc-André Renold.

A. Cultural diplomacy and the decolonization of collections

Ms. Irina Bokova, UNESCO Director-General from 2009 to 2017, was the first expert to speak. She began by stressing the importance of changing the narrative about African colonial history and mentioned, in this regard, the monumental project launched by UNESCO in 1964 on “The General History of Africa” aimed at remedying the widespread ignorance about the African past. She also recalled that the translation of “The General History of Africa” in the form of educational texts began during her tenure at UNESCO and continued with more in-depth research. She then listed several UNESCO initiatives to raise awareness about African cultural heritage, such as the adoption in 2012 of

the Periodic Report Action Plan for Africa (2012-2017), the launch in 2013 of the publication of Volume IX of “The General History of Africa”, the proclamation in 2015 of African World Heritage Day every 5 May, and the 15th anniversary of the African Union (AU) in 2017. In a more global context, UNESCO has also sought to contribute to the efforts invested by different actors in the search for legal and/or political measures for the return of colonial cultural objects under conditions of asymmetry (as seen between the EU and Africa). UNESCO has also addressed the ethical aspects of the appropriation of heritage and cultural objects in a colonial context.

Ms. Bokova then focused on the legal framework that applies to the return of African colonial cultural objects, recalling that UNESCO is the legal guardian of six cultural conventions. Unfortunately, as mentioned earlier, these conventions are deficient, especially with regard to their implementation. Furthermore, UNESCO’s member States do not have the will to create new legal instruments. Therefore, UNESCO is now trying to strengthen the existing legal framework in order to improve the implementation of the above-mentioned conventions, especially the very important 1970 UNESCO Convention. To this end, in June 2012, the Subsidiary Committee of the Meeting of States Parties to the 1970 UNESCO Convention was established, on the occasion of the Second Meeting of States Parties. Since then, the 1970 UNESCO Convention has been much more effective in combating the illicit import, export and trafficking of cultural objects. Ms. Bokova regrets, however, that several African States are not yet party to this Convention, which provides an important platform for inter-State cooperation on the return of cultural objects.

Ms. Bokova then turned to the issue of cultural diplomacy. Indeed, in parallel to the process of adopting the 1970 UNESCO Convention, another important political process took place, namely the creation, in 1978, of the ICPRCP, a permanent and independent body with the task of finding ways to facilitate bilateral negotiations between the States concerned for the restitution or return of cultural objects and to encourage them to conclude agreements to this effect. In 2010, the ICPRCP adopted the Rules of Procedure for Mediation and Conciliation. However, Ms. Bokova noted that once again, African countries are reluctant to submit their requests to this committee. Perhaps this is because the Committee does not have a long history of successfully resolved cases. Nevertheless, some successes can be cited, such as the return by Italy of the Aksum Obelisk to Ethiopia.

Finally, Ms. Bokova mentioned the 2015 UNESCO Recommendation and, in this context, the role of museums in the “decolonization” of cultural heritage. Indeed, in many African countries, one of the most important problems still encountered today is the destruction of museums and their collections. This is why UNESCO has been keen to work in these regions to (re)build museums, as was the case in Mali where UNESCO helped reopen the Timbuktu Municipal Museum. The Mali case had a big impact at the global level because it put cultural heritage at the top of the political agenda thanks to its

importance for peace, security, national unity and identity. This case also sent a very strong signal that we cannot accept impunity for the plundering of cultural heritage. Today, the different agents working for the establishment of peace in the world are trained in the protection of cultural heritage. In addition, other events, such as those in the Middle East, have built a new approach to cultural heritage and led to the adoption by the United Nations Security Council of Resolution 2199 of February 2015, which condemns the destruction of cultural heritage and adopts legally binding measures to combat the illicit trafficking of antiquities from Iraq and Syria, and Resolution 2347 of May 2017, which condemns the illegal destruction of cultural heritage.

In conclusion, Ms. Bokova mentioned the immense impact of the Sarr/Savoy Report on subsequent policy decisions regarding requests for the return of cultural objects in different countries. This report has indeed encouraged States to find solutions for restitution. Finally, she quoted a sentence from the 1945 UNESCO Constitution that “a peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world, and peace must therefore be founded upon the intellectual and moral solidarity of mankind”.

B. Dealing with collections from colonial contexts: recent developments in Germany

The second presentation of this panel was given by **Dr. Robert Peters**, Senior Officer of the German Federal Foreign Office. Dr. Peters began by distinguishing four categories of objects that are treated differently from a legal point of view: cultural objects removed during armed conflicts, to which the 1954 Hague Convention applies; art looted during the Nazi era, to which the 1998 Washington Principles apply; illicitly exported cultural objects, to which the 1970 UNESCO Convention applies and for which the ICPRCP was created; and collections from colonial contexts. Only the latter category lacks its own international legal instrument. Indeed, the 1970 UNESCO Convention and the 1995 UNIDROIT Convention do not apply to cultural objects looted during the colonial period in Africa because of the principle of non-retroactivity. As for the ICPRCP, African States are reluctant to appeal to this Committee and only nine cases of return have been successful in forty years.

Inducing change always starts with establishing political will. On 14 March 2018 the governing parties in Germany adopted a Coalition Agreement in which it is expressed that the basis of the German democratic consensus includes Germany’s recognition of, among other things, its colonial past. This document thus puts in writing, for the first time, Germany’s recognition of its colonial past and its political will to return colonial cultural objects to Africa. In a second step, in March 2019, the German federal government, the federal States and the German municipal organizations jointly adopted Framework principles for dealing with collections from colonial contexts. These general principles

apply exclusively to Germany. One of the objectives of the Framework principles is to ensure the return of collections from colonial contexts. The return is firstly aimed at human remains and then at cultural objects that have been acquired in a way that is no longer legal or ethically justifiable. Furthermore, the return of such objects should only be done in agreement with the countries and societies of origin. As a third step, and on the basis of the above Framework principles, a German Contact Point for Collections from Colonial Contexts was established in October 2019 in Berlin by the German federal government, the federal States and the German municipal organizations.

As a result of these measures, Germany has decided to return the Benin Bronzes to Nigeria by 2022. In this regard, in June 2021, an inventory of Benin Bronzes in German museums was published. In addition, a new museum project in Benin City is underway to house these objects. Germany had also already returned a bible and a witbooi whip to Namibia in February 2019.

In conclusion, Dr. Peters notes that the treatment of cultural objects removed in a colonial context is an ongoing process that tends toward an acknowledgement of the past. However, the burden of the colonial past of European States such as Germany cannot be borne by museums alone. On the contrary, decolonization is a process that concerns the whole of society and therefore requires a change of mindset and of concepts and perceptions in society itself. Furthermore, beyond the simple return, alternative solutions must also be considered such as short- and long-term loans, the creation of replicas, the use of 3D digitization or the transfer of ownership. The concept of the museum should also be rethought, for example by creating museums for intangible cultural heritage and contemporary art, fashion, design, music and performance, in order to reconnect tangible cultural objects with their intangible meaning. Finally, these goals can only be achieved through international cooperation by which all stakeholders can learn (or unlearn) from each other.

C. Righting an injustice. Dutch policy on collections from a colonial context

Mr. Robert Verhoogt and Mr. Maurice Boer, senior policy officers of the Dutch Ministry of Culture, gave the third presentation of this panel. Mr. Verhoogt first recalled that in recent years a strong social and political debate has been undertaken in the Netherlands concerning the country's colonial past. Discussions have focused on the status of famous Dutch historical figures, the terminology surrounding the "Dutch Golden Age", and the shift in the historical perception of the Dutch colonial past toward a more inclusive concept. Two exhibitions on colonial history that took place in Amsterdam (the "Slavery" exhibition and the "Expressionism and colonialism" exhibition) highlighted the importance of colonial history and collections. Another major milestone was the return of the Prince Diponegoro kriss to Indonesia in spring 2020. In addition, a special advisory committee was established to advise on how to deal with collections from a colonial context and produced a report on the issue. On this basis, a

policy paper was sent to Parliament this year. Shortly afterwards, elections were held in the Netherlands. As a result, the Dutch government is in the midst of renewal and parliamentary discussions and implementation (including the policy paper on colonial collections) are currently on hold, awaiting possible approval.

Mr. Verhoogt then outlined the Dutch approach to collections from a colonial context. He recalled that the Netherlands has a long colonial history and that cultural objects were removed from former Dutch colonies from the early 17th century until 1975. The collections in the Netherlands therefore include a wide range of art objects, the similarity of which lies in their legal status. The starting point for the Dutch approach to collections from a colonial context is therefore simply the recognition of this injustice.

Three types of colonial cultural objects that may be returned to their country of origin can be categorized: cultural objects stolen from a former Dutch colony, cultural objects stolen from a former colony of another country that ended up in Dutch collections, and objects that were not stolen but have a particular cultural, historical or religious significance for their country of origin. For the first category of objects, restitution is unconditional, while for the other two categories, the evaluation committee must weigh the interests of the various parties.

Mr. Verhoogt then focused on the broader legal context surrounding the issue of colonial collections. Of course, particular attention is paid to the principles of international law and soft law instruments. In the Dutch national system, there are no fundamental legal restrictions on the return of objects from a state-owned collection (including no statute of limitations). Moreover, the approach applied is a State-to-State approach. Therefore, returns are not made directly to local communities. Another important principle is to deal only with state-owned collections and thus to respect the property rights of other public owners (e.g., a distinction is made between state-owned Benin bronzes and those owned by the City of Rotterdam). Nevertheless, the central line of action remains the will to repair the injustices of the past based on provenance research and international cooperation with the countries of origin.

Finally, Mr. Verhoogt presented the internal process for handling restitution requests from the Netherlands. First, a request for restitution is sent to the Dutch government by a country of origin. Then, this request is evaluated by a committee of experts independent of the government. Finally, the Minister of Culture, as the representative of the owner (i.e. the state) of the disputed objects, decides whether or not to return the objects to their country of origin.

Mr. Boer then spoke about the concrete actions that the Netherlands must take to move beyond good intentions and the challenges encountered in this process. First, he recalled that requests for return must be carried out through a joint process with the countries of origin. Indeed, the return of an object is a

practical response to a historical injustice, as well as a symbolic act of reparation. The latter cannot therefore be done without a consensus with the requesting country. In many cases, an imbalance in the bilateral discussions can be observed because the holders of the objects now have more relevant knowledge about them than their States of origin. This problem must be overcome by appropriate efforts (e.g., making inventories of collections available online with sufficient information for restitution requests, conducting the evaluation of the request independently of the Dutch government and according to objective criteria, or exploring solutions that go beyond simple restitution such as exchanges).

Mr. Boer then stressed the importance of provenance research in the evaluation of return claims. Indeed, the acceptance or not of the restitution request depends to a large extent on the provenance of the object, since it must be proven that the object was indeed illegally exported or looted. Furthermore, re-establishing the exact provenance of an object is very important since the history of the object can be as valuable as the object itself. The difficulty lies in determining when enough information has been gathered to be able to determine that an object was “unintentionally lost” and “in a colonial context”. A pragmatic approach is necessary and efforts have been made in this direction. Mr. Boer first mentioned the Pilot Provenance Research Project on Colonial Era Objects (PPOCE) of the Rijksmuseum, the National Museum of World Cultures, and the NIOR Institution, which aims to develop a methodology for provenance research and is expected to result in a report in the spring of 2022. He also mentioned the academic effort undertaken in a four-year research project on colonial collections, led by Prof. Dr. Susan Legêne and Prof. Dr. Wayne Modest of the Vrije Universiteit in Amsterdam. This project is a collaboration between five museums (including the National Museum of World Cultures) and five Dutch academic institutions, as well as various international partners around the world. The research focuses on the issues of ownership and value of colonial heritage in museums.

Conducting provenance research is not enough, however, and it is also necessary to continue to stimulate such research. Provenance research is only possible if there are sufficient archival sources. Promoting an international exchange of the results of provenance research and establishing an interdisciplinary approach that brings together a diversity of knowledge and expertise is therefore crucial. In this respect, the Netherlands welcomes the cooperation between the relevant institutes (both in the Netherlands and internationally) and calls for the sharing of experiences at governmental level, as well as the linking of collection data.

D. The return of colonial objects: what role for Switzerland?

The State Councillor and lawyer, **Carlo Sommaruga**, spoke about the role that Switzerland could play in the return of colonial cultural objects to Africa. He began by recalling that Switzerland, although never a colonialist country, also has some experience in the restitution of colonial objects and illustrated

his remarks with three examples. First, in 1930, Switzerland returned to Japan a bell from the Japanese temple of Hongsen-ji in Shinagawa, which had been lost under unclear circumstances and had ended up in Geneva, in the park of the Ariana Museum, through a donation. As a sign of gratitude, the Japanese temple offered Geneva a replica of the bell. The second example cited was that of the return by the Museum of History of Bern to Bolivia of a pre-Columbian stone statuette representing Ekeko. This piece is now in the National Museum of Archaeology in La Paz, and has thus regained its place in the cultural narrative of Bolivian communities. Finally, in 2010, after a 25-year conflict, Switzerland returned a Makonde mask to Tanzania. This mask had been stolen in 1984 from the National Museum of Tanzania and purchased and exhibited at the Barbier-Mueller Museum.

These three examples serve to show that looted colonial objects were not exhibited as such in a Swiss national museum (contrary to what is observed in the former colonial powers) and that restitution decisions are made locally by municipal, cantonal or museum authorities. Moreover, despite the absence of a colonial past for Switzerland (which is a definite diplomatic advantage), it cannot be denied that Swiss missionaries and scientists did participate in looting. It is therefore also necessary for Switzerland to reread its history in order to assume its part in the colonial past. This introspection has already been undertaken by many Swiss museums. At the political level, however, this introspection has yet to be performed.

The absence of any geostrategic aim is another asset of Switzerland, which aims at dialogue and peace between peoples. This makes it possible to avoid making trade-offs with restitution. However, in terms of foreign policy, Switzerland still misses important issues, such as the restitution of colonial cultural objects in Africa. Indeed, the Federal Council's strategy for sub-Saharan Africa from 2021 to 2024 does not address this issue at all. Thus, the establishment of a national strategy between the Federal Department of Foreign Affairs and the Federal Office of Culture, in collaboration with Swiss cultural actors (such as, for example, the eight museums involved in the Benin Initiative in Switzerland) would be welcome.

According to Mr. Sommaruga, Switzerland could assume a strategic role for the international community. Indeed, Geneva could be the place for a diplomatic discussion on the issue of the restitution of looted or illicitly exported cultural objects and thus allow the establishment of a new international convention on the subject. To conclude, Mr Sommaruga underlined the fact that the issue of the return of colonial cultural objects is not only a question of justice, solidarity or mobilization of civil society, but also a question of sensitization of parliamentarians, as they are the ones who in the end ratify international conventions and vote on laws.

E. The return of colonial cultural objects to Africa: France's approach

Prof. Clémentine Bories of the University of Toulouse 1 Capitole presented France's approach to the issue of the return of colonial cultural objects. The case of France is at the heart of the subject and of the discussions, but not only since the speech of President Macron in Ouagadougou. Indeed, after the Napoleonic conquests and during the Congress of Vienna in 1815, the first restitutions of art objects following an armed conflict could already be observed.

Prof. Bories first focused on the words, asking what exactly is meant by the term "colonial cultural objects". Is there any real legal particularity regarding their fate? Are they really "cultural"? This qualifier does not embrace all the meanings of these works. The category of "cultural object" did not yet exist in international law at the time of their removal. Some of these objects had a different scope and identity. They therefore became cultural objects after their appropriation by Western countries. Thus, the term "cultural object" itself symbolizes in a certain way the culture of the colonizer. What about the term "colonial" objects? This category does not even exist at the legal level.

Next, Prof. Bories examined the French legal context which is currently unfavourable to returns. French administrative law and its principle of the inalienability of public property are opposed to restitutions. This principle prevents any deaccessioning of public property. Article L451-5 of the French Heritage Code deals specifically with the principle of inalienability in relation to the collections of French museums belonging to a public entity. Furthermore, the possibility of deaccessioning (which may be considered when an object loses its public interest for France) cannot be used to evade the principle of inalienability, since the mere consideration of the status of colonial objects presupposes its importance. Nor does current international law formulate an obligation of return. International conventions were adopted far too late and do not apply retroactively. From a legal point of view, there is therefore no obvious solution available to France today.

The political context is no doubt less unfavourable. However, the cohabitation of ex-colonists and ex-colonized people on French territory makes the debate very delicate and can sometimes lead to contradictory positions. Moreover, such developments, such as President Macron's speech in Ouagadougou or the Sarr/Savoy Report, remain measured. It is true that this report has found a strong resonance at the international level, but nothing new has been invented following its publication. France has simply resorted to the method of the law of exception, according to which the principle of inalienability can be set aside on a case-by-case basis. This method had already been used for the restitution of the Maori heads, for which Law n° 2010-501 of 18 May 2010 had been drafted. This same method was used in Law n° 2020-1673 of 24 December 2020 for the restitution of the sword and the treasures of Abomey to Senegal and Benin.

However, alternatives had been proposed after a long research work carried out within the Ministry of Culture. In particular, the idea was to establish a criterion that would make it possible to define in advance which objects should be returned in the event of a request. The Sarr/Savoy Report also mentioned the possibility for France to conclude bilateral treaties with the requesting States. Unfortunately, the choice finally made, which was much less stable in terms of legal security for the claimant, was to let politicians make decisions on a case-by-case basis, as was already the case before. In other words, the executive decides and the legislators must follow.

This raises the question of how the situation in France will evolve. First of all, diplomacy tends to become the driving force of French policy in this area. French policy is evolving from administrative considerations of conservation of property to a cultural policy that becomes part of a whole and a relationship with other states. We also see a shift in the actors. Indeed, the Attorney General is no longer the only one in charge of the requests, which are often also handled by the Élysée or the Ministry of Foreign Affairs. Symbolically, and in response to the Sarr/Savoy Report, France organized a forum on 4 July 2019 “African Heritage: succeeding together in our new cultural collaboration”, that signs a completely new lexical field. Today, we can also ask ourselves if all the objects must be returned or if we can also think of other avenues such as circulation through loans (i.e. a return without transfer of ownership).

In conclusion, France has an ambiguous position regarding its colonial past. The implementation of a new diplomacy or cultural cooperation, in order to move away from the difficult question of decolonization, which tends to close the debate, is an avenue to be explored.

F. The return of cultural objects: legal and ethical dimensions of museum practice

Prof. Carsten Stahn from the University of Leiden explained what the practice of museums should aim at when faced with requests for the return of colonial cultural objects from a legal and ethical perspective. Prof. Stahn began by discussing the current context of the return of colonial objects. In this respect, he first mentioned the new look at consent. Indeed, it is necessary to find a new form of consent between countries holding colonial cultural objects and countries of origin of these objects based on structural injustice and contemporary relations. Furthermore, since the Sarr/Savoy Report, developments have taken place at the national level in various European states. The idea now would be to use the creativity that States (such as Germany or the Netherlands) have shown in their national frameworks and develop it at the international level. Furthermore, we must stop opposing law and ethics. The issue of the return of colonial objects is not only a question of morality or justice, but rather a question of the interdependence of justice (legal errors and structural injustice), ethics and human rights (access to culture and the rights of indigenous populations). Finally, two difficult but central issues need to be

focused on: the use of new approaches to bring objects closer to the communities of origin whose heritage they embody and represent, and the need for new forms of engagement and reflection on the concept of the museum from a “translocal museology” perspective.

Next, Prof. Stahn presented the areas of convergence in national practices and principles. According to him, States should now agree to bring together their national principles in a uniform manner, especially since there are already many commonalities in national practices. A first area of convergence is that of post-colonial provenance research. In an effort to achieve greater transparency, several States and museums holding colonial objects have taken a more proactive approach to provenance research by not waiting for community claims, digitizing their collections, diversifying sources of information, recognizing the importance of including and consulting claimant communities in the research process and the preservation of cultural heritage, and providing them with a right of access to the truth. In addition, several States emphasize the principle of equality as central to effective collaboration on access to sources and provenance research. Indeed, according to the Belgian Ethical Principles for the Management and Restitution of Colonial Collections of June 2021, the principle of equality is the starting point for ensuring a new collaboration between cultural institutions among themselves and with communities of origin. The 2019 Guidelines for German Museums also refer to the principles of mutual respect and equal communication.

A second area of convergence is that of return criteria. Based on the principles of reasonableness of return and fairness, two criteria have been developed to examine return claims: the context of acquisition and the cultural significance of the disputed objects or access to them for the communities of origin. However, there are still nuances in the way these criteria are applied. With regard to the context of acquisition, there are two approaches: a broad approach to structural injustice (as presented in the Sarr/Savoy Report), which seeks a reversal of the burden of proof for objects taken by force or presumed to have been acquired in an inequitable manner, and a narrow approach (as adopted in Germany or the Netherlands), which seeks to determine whether fault, namely the violation of legal norms at the time of loss of possession, has been committed. At the legal level, there are two ways of looking at the problem: either one takes into account the law existing at the time of the loss and believes that it was violated (because norms prohibiting such thefts already existed at the time), or one believes that the application of the law of the time was biased and that one should therefore observe local customs and laws instead. Thus, perhaps our historical conception of law (such as statute of limitations) should not be applied for reasons of equity or justice. In both cases, there is a legal justification for return. As for the criterion of the cultural significance of the disputed objects or access to them for the communities of origin, there are also different approaches: the human rights approach which argues for a right of access to culture, but requires a continuous link between the community and the objects (which is rather hypocritical since this link was precisely broken by the colonialists or is difficult to prove), and the

illegitimate enrichment approach, which is for example applied in the Netherlands in matters of colonial cultural objects that was stolen by another country than the Netherlands but ended up there.

A third point of convergence is found in the change of exhibition practices. The Belgian Ethical Principles 2021 propose, for example, contextualizing the placement and labelling of objects, being cautious about the language used (avoiding words such as “collect” that obscure the underlying violence of taking these objects), and recalling the role of scientific racism in the acquisition of human remains, for example.

In conclusion, Prof. Stahn mentioned a number of avenues for the future. First, there should be a shift from fragmented national principles to common international principles. Indeed, claims for return should not depend entirely on the national law of the country or museum where the object landed as a result of multiple transactions without the consent of the communities of origin. In addition, a plurality of avenues should be considered for responding to requests for return. In other words, physical return should not be the only path to reparation, but there should also be acknowledgement of the past, dialogue, apology and cooperation. Furthermore, the binary logic between States should be overcome by ensuring new forms of re-circulation of objects, return of archives, engagement of local communities and creative re-engagement with these objects. Indeed, as mentioned in the Sarr/Savoy Report, the museum is not always the best place to keep these objects. Finally, there is a need to rethink private sector regulation of corporate and cultural rights. Currently, a draft instrument to regulate the activities of transnational corporations and other business enterprises under international human rights law is being drafted by the Office of the UN High Commissioner for Human Rights. This should include an obligation to respect the right of access to culture by establishing requirements of transparency and due diligence, as well as contextual restrictions based on the cultural significance of the objects.

G. African cultural objects conserved at MEG: issues and challenges

Mr. Boris Wastiau, Director of the Musée d’ethnographie de Genève (MEG), spoke about the issues and challenges faced by the MEG concerning the African cultural objects that are conserved there. First, he returned to the little-known colonial past of Switzerland and Geneva. He recalled that, although there have never been any Swiss colonies abroad, several Swiss and Genevans were involved, since the time of the slave trade, in various European colonial processes such as the financing of slavery economic circuits or the involvement in the trade of colonial cultural objects. As an example, he mentioned the 18th century investments of several Genevans in Caribbean slave plantations, following which the Genevan Ami Butini offered, in 1758, natural history specimens, so-called ethnographic objects and an African fetus brought from his slave plantation in Suriname to the library of the Collège Calvin. Another notable example was that of Henri Dunant, founder of the Red Cross and Nobel Prize winner, who in

1859 undertook a business trip with Napoleon III to promote the interests of the Geneva Company of Swiss Colonies, which had been granted a large agricultural concession in Sétif, Algeria. In addition, hundreds of Swiss missionaries went to Africa during the 19th and 20th centuries, supported in particular by the Genevan geographer Alfred Bertrand, whose widow bequeathed his most important collections to the MEG. Thus, since the 18th century, colonial cultural objects have arrived in Geneva and have, for the most part, been assembled in a single collection, that of the MEG.

Mr. Wastiau focused on the measures put in place by the MEG to address this problem. In the fall of 2019, the MEG adopted its new Strategic Plan 2020-2024 with the goal of decolonizing the institution and its collections. The first step was the recognition of the colonial past of much of the collection. The second step was the recognition that there is strong criticism (domestic and foreign) of the way in which these collections are displayed, despite all the efforts made by the museums to enhance the value of the objects and cultures represented. This criticism stems from the fact that the museums are the heirs of a colonial discipline that has not yet been sufficiently deconstructed (e.g., monopoly of the discourse on the works and cultures, delay in the transparent presentation of their colonial origin, modes of presentation and interpretation that do not respect the usage or protocol of the cultures of origin, apparent lack of interest in the creators of these works, which are qualified as orphans because the identity of their creators has not been preserved, etc.). The MEG has also adopted a development strategy around colonial cultural objects to establish new relationships with a range of stakeholders, which includes the original populations and the public. In addition, for more than a decade, the MEG has worked in collaboration with archivists and historians from Geneva and abroad on the provenance of collections. Also, the Swiss Federal Office of Culture is now financially supporting a national project in the field of returns concerning objects from Benin City, Nigeria. Ten years ago, when the first Ethical Commission of the Museums of the City of Geneva was created, the MEG also redefined its acquisition policy and began to refuse proposals for donations, bequests or purchases of cultural objects whose international trade is now prohibited at the international level or in the country of origin, even if the objects in question were already in Switzerland prior to the entry into force of the Federal Law on the International Transfer of Cultural Objects (LTBC) in 2003. A new “Policy on (De-)Colonial Collections” has been drafted by the curators since 2019 and should be implemented soon.

In order to realize the potential of the objects to mediate with the cultures of origin, all museum curators are now helping to identify sensitive collections and reach out to stakeholders connected to them to initiate a conversation. The MEG is committed to respecting indigenous protocols governing access and use of sacred and secret objects to the fullest extent possible in order to establish respectful and equitable relationships, to co-produce new interpretations and presentations of these objects with these partners, and to reconnect the collections to their cultures of origin through various projects such as the latest and still ongoing exhibition "Environmental Injustice. Indigenous Alternatives".

Finally, Mr. Wastiau recalled that the MEG, as a museum, has no legal personality and therefore no decision-making power in matters of restitution. The latter belongs to the City of Geneva, respectively to its Administrative Council and/or its City Council. The MEG nevertheless provides all parties concerned with all the information necessary for the procedures and decisions to be taken.

The second part of the presentation was given by **Mrs. Floriane Morin**, curator of the African collections at the MEG, who presented the tracks of co-construction engaged by the MEG with African partners around the African collections of the MEG. The Museum has collections from North Africa to Madagascar, comprising 60,620 objects. The City of Geneva has collected these objects since the 18th century. The objective of the MEG today is to establish the provenance of these objects in a transparent manner and in collaboration with their countries of origin.

Ms. Morin presented several objects, as well as their colonial past, insisting on the fact that the difficulty often lies in understanding and tracing their history. She also emphasized the importance of networking between institutions regarding colonial collections and cited the example of the museums of Basel and Geneva, which have extensively exchanged photos and archives and sent them to the association of museums in Namibia. The MEG also worked with the “Laboratorio Arts Contemporains”, a trans-continental platform for the implementation of intercultural and multidisciplinary projects between West Africa, Europe and the Caribbean. Since 2012, two research projects are underway. One of them was dedicated to the Beninese sculptures of Porto Novo. In Benin, the “Laboratorio Arts Contemporains” has established a dialogue with the Asogba family. In Switzerland, Ms. Morin is working for the MEG to establish a platform to create a list of Asogba sculptures in private or public hands in Switzerland. The common mission of the MEG and the “Laboratorio” is the reintegration of Asogba statuettes in Benin through different forms and in collaboration with the Beninese communities concerned.

The Benin-Switzerland Initiative (BSI) for research and dialogue between Nigeria and Switzerland is another flagship project in which the MEG is participating. Eight Swiss museums are currently in possession of about 100 Beninese objects, some of which were acquired during the colonial period. Since June 1, 2021, these museums have been conducting research in collaboration with Nigerian historians from the University of Benin in order to establish provenance and biographies in a transparent manner. Several methods are being employed in this regard, including provenance research in European and Nigerian archives, more basic research on the art trade and the role Switzerland played in it during the colonial era, and the consideration of stories passed down orally by Beninese artisans and palace dwellers in Benin City, all guided by principles of openness and transparency. The project is scheduled to end on 31 July 2022. The BSI is also in close contact with other actors such as Digital Benin, Benin Dialogue Group and other international provenance research working groups. It should also be noted

that this is the first time that the Federal Office for Culture has financially supported a national project for the return of colonial objects to Africa.

H. Establishment of a Platform for Cultural Heritage Diplomacy at the University of Geneva

Prof. Marc-André Renold of the University of Geneva, holder of the UNESCO Chair in the International Law for the Protection of Cultural Heritage, presented the Platform for Cultural Heritage Diplomacy at the University of Geneva, which is currently being established.

Prof. Renold focused on the notion of diplomacy. Diplomacy means, first of all, facilitating communication and relations between States. In this sense, the project aims to promote the different avenues that are open to them and to other communities to deal with the return of colonial cultural objects and will serve to facilitate and improve relations between the North and the South. However, diplomacy also has a second meaning, namely the fact of discussing matters with sensitivity in order to reach a certain agreement or find solutions to a particular issue. Through this second aspect, diplomacy lends itself well to a case-by-case approach and to specific demands that may be of more or less importance.

To illustrate this idea, Prof. Renold unveiled an 18th century icon of John the Forerunner. This icon had fallen into the hands of an Englishman who was in the Royal Airforce in Cyprus during the 1974 conflict. He brought it back to the UK and passed it on to his son. Seeking to do what he considered the right to do, the latter decided to return it to Cyprus where it belonged. To do so, it contacted the Art-Law Centre of the University of Geneva in 2019. Since then, Prof. Renold is working to ensure the restitution of the icon, in cooperation with Cyprus authorities and the Orthodox Church, in particular its Archbishop. This process has been considerably slowed down by the pandemic.

This example expresses the idea that diplomacy can lead to the resolution of conflicts, but also to smaller “low key” returns. Thus, diplomatic channels seem to be a good way to deal with present or future requests for the return of colonial cultural objects removed from their communities or States of origin, especially when the cultural objects in question is of lesser economic value, but carries an important spiritual or symbolic value for the societies from which it originated.

When it is in full operation, sometime in 2022, the Platform will provide different services, from advice as to what means of dispute resolution should be followed to concrete solutions relating inter alia to so-called orphan objects (i.e. objects without provenance). A special focus will be given by the platform to African States and communities, which will be developed in the last presentation of Professor Mbengue.

IV. Conclusions: an action plan for African States

Prof. Makane Moïse Mbengue of the University of Geneva closed the conference, which he renamed “Back to the Future”. Indeed, the various experts examined the colonial past of Africa in order to improve the future of its cultural heritage. He recalled that the keynote speaker, Prof. Sarr, emphasized these two temporal dimensions by reflecting on how to reconcile the past and future of African colonial cultural assets. This issue is also a constant challenge for lawyers specializing in public international law.

This can be illustrated by a well-known case in public international law, the Advisory Opinion of the International Court of Justice (ICJ) in the case of the Chagos Archipelago, through which he was able to establish a link between the decolonization of territories and the decolonization of a State's cultural heritage. In February 2019, the ICJ issued the Advisory Opinion “Legal Effects of the Separation of the Chagos Archipelago from Mauritius in 1965”. In 1965, Mauritius became independent from the United Kingdom. However, during the process of gaining independence, the United Kingdom detached the Chagos Archipelago from Mauritius and appropriated it, promising to return it later. For more than 40 years Mauritius tried to obtain the Chagos Archipelago through various diplomatic exchanges and negotiations, but to no avail. The United Kingdom cited the Cold War and the fight against terrorism as reasons for refusal. Then it finally decided never to give it back by declaring British sovereignty over the territory. Mauritius convinced a majority of UN member States to request an advisory opinion from the ICJ to determine whether or not the decolonization process of Mauritius was complete. The ICJ's answer was unequivocal: it wasn't and, therefore, the continued presence of the United Kingdom in the Chagos Archipelago constituted an internationally wrongful act and the United Kingdom had to put an end to its occupation.

There are many similarities between the case of the Chagos Archipelago and that of African colonial cultural objects according to Prof. Mbengue. First, both cases are stories of decolonization. In the case of African colonial cultural objects, it is about the cultural decolonization of the continent that will only be completed with the return of cultural objects to Africa. Secondly, both cases aim at the decolonization of international law, that is to say the questioning of the classical and fundamental concepts of international law as formulated by European nations. In the case of the Chagos Archipelago, the United Kingdom believed that it was legitimate to own the territory in question. In the case of African colonial cultural objects, European States also felt entitled to take possession of such objects. It is true that efforts have been made to decolonize international law in this area, notably through the 1970 UNESCO Convention, the 1995 UNIDROIT Convention and the legal framework established by the AU. Nevertheless, it is clear that international law in this area is still too Euro-centric (particularly with regard

to the question of the burden of proof on the requesting States). Finally, these two cases tell stories of reuniting objects to people. In the case of the Chagos Archipelago, it is a request for the return of a territory to the people of the Republic of Mauritius. In the case of African heritage, cultural objects must be returned to the communities of origin and thus returned to the people to whom they belong, thus allowing the objects and the populations to be reunited

This ambition requires thinking about an **action plan for African States** that will be built through the Platform for cultural heritage. Prof. Mbengue mentioned the four main axes that should support the project. First, it will be a matter of informing and sensitizing African countries (which still lack expertise and information) on the political and legal framework governing the issue of the return of African colonial cultural objects. Then, it will be necessary to elaborate a codification of the good practices developed by European countries in order to reassure African States who still fear that their requests for return could create diplomatic difficulties with the countries holding these objects. This will ensure that requests for return are legitimate and part of the right to self-determination and development for the African continent. Third, the AU should develop and adopt a joint declaration by African States to strengthen its existing legal framework on return and restitution. Finally, African States should formulate guidelines to concretely implement the legal framework proposed by the AU regarding the recovery of cultural heritage. The idea is also to discuss with the eight regional economic communities of the African continent to take into account their specificities and needs, on a case-by-case basis.

Finally, Prof. Mbengue warmly thanked all the speakers for their excellent presentations and stimulating views, as well as all the partners of the University of Geneva who joined forces to create this event.

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