PROBLEM OF THE APPLICATION OF THE "VIENNA CONVENTION ON THE SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS": CASE OF THE REPUBLIC OF BENIN, RELATING TO THE ROYAL TREASURES AND THE COLONIAL ARCHIVES

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Le monde entier a été témoin en 2021, de cette scène.

As a symbol, the process initiated by Benin and France in August 2016, took shape, and led to what the whole world witnessed on November 2, 2021. The restitution of 26
works from the royal treasures of the Danhomey kingdom. "These objects were looted when the capital of the kingdom of Dahomey was taken by French troops led by General Alfred Dodds" on 17 November 1892 and integrated into "national [French] collections through donations or dations from the end of the 19th century to 2003".

His works were "exhibited at the Musée du Quai Branly - Jacques Chirac until their definitive restitution in 2021.

Trône du roi Ghézo, 9ᵉ roi selon la tradition.

I would like to share with you, if I may, some aspects of the process that led to this.

- A first formal request from Benin made in August 2016 by the President of the Republic.
- In March 2017: the French side refused to accept the request "in the name of the principle of inalienability of public collections" (Macron, 02 November 2022) in accordance with French law at that time.
- November 2017 in Ouagadougou, commitment by President Macron 'to make possible the temporary or definitive restitution of works of African heritage'. This personal and voluntarist commitment by the French President will change the situation.
In March 2018, the French (Macron) and Beninese (Talon) heads of state had a fruitful meeting on the issue. "Mr Felwine Sarr and Ms Bénédicte Savoy were mandated to draw up the intellectual framework of a doctrine on restitution".

Handing over of the Sarr-Savoy report to the President on 23 November 2018.

This led to President Macron’s commitment "to return 26 works from the treasures of Abomey, taken in war by Colonel and then General DODDS".

The [French] parliamentarians unanimously adopted the derogatory law promulgated on 24 December 2020, authorising the restitution" of 26 works to Benin. In reality, this law makes an exception for the 26 Beninese works that must be returned within one year (24 December 2021).

The Beninese parliament adopts law 2021-09, which will be promulgated by the President of the Republic on 20 October 2021, updating law 2007-20 in order to reorganise its legal environment and prepare for the restitution of works.

You know the rest. On 10 November 2021, the 26 works will land in Cotonou.
This panel is dedicated to the Vienna Convention of 1983, and I am going to tell you how it relates to the Beninese experience.

You would have noticed that the fundamental legal instrument used in the framework of this restitution was the French legislation, which, in reality, did not lend itself to it at all because the "principles of inalienability, unseizability and imprescriptibility attached to the French cultural heritage (this is also the case in Benin, by the way) constituted a lock desired by the French people.

It was therefore necessary to break this lock (despite some dissenting voices, not the least in France) to achieve this.

Nowhere in the facts, nor in the literature tracing what might now appear to be a 'doctrine' of the restitution of cultural property, has the Vienna Convention, which polarises a current of thought within the Group of Experts on Shared Archival Heritage (EGSAH), been invoked. Everything was done first in a national and then bilateral framework.

Was an international treaty at the heart of the approach in this case?

The Vienna Convention of 1983 is nevertheless a fundamental international instrument but one that suffers, like the Albatross, from "its giant wings that prevent it from walking" (Baudelaire, 1861), that is to say, that prevent it from taking flight.

The giants here, you would have understood the analogy, are for the most part all those Western countries that are certainly 'proud' of their inglorious colonial past,
involved in historical acts of plundering, despoiling, or punitive expeditions for the purpose of dispossessing peoples of a non-negligible part of their histories and their identity markers, and that refuse to ratify this convention.

On the other hand, and this seems curious to me, many countries with claims have not ratified it either! If for the giants of the West, we can understand the fear of being dispossessed of these assets (source of tourist income or memorial past of which we want to preserve the traces), we cannot yet explain the reasons for the posture of certain "victim" or "claimant" countries.

With regard to archival heritage, the problem remains the same. While we can be pleased with this first step taken by France and Benin, the written sources that made it possible to document the 26 works and their journey have not followed the restitution. In this case, they may be scientific memoirs, reports or other written acts of the colonial administration or the French army, as described in her paper on "military-scientific expeditions" by Ms Donatienne Ruby-Nougaret (in charge of documentary studies at the Historical Service of Defence in France) (Quai Branly Museum - Jacques CHIRAC symposium, 2021).

To my knowledge, Benin has not yet submitted a request in this regard. But, as a national archivist, this is of great concern to me as it mobilises the attention of the authorities at various levels.

I would like to share with you how the issue of colonial archives was managed or the questions that these archives continue to raise in the case of the countries of the former French West Africa (1895-1958). But given the time, perhaps this will be for another time.
Talking about this reality of restitution or return of cultural property often offends the ego, hearts, or morals, depending on whether one is in the position of the possessor or the dispossessed. There is only one faculty that allows one to see reality more closely and to take the right measure of things. Consciousness: an awareness of what could unite people more, give them existential identity markers and the resolution to restore, return or at worst share.

In the field of archives, several claims/litigations exist which take various forms, and which are delivered to various fortunes (Lowry, 2020). Some time ago, Germany announced the return of over 500 bronze statues to the former Kingdom of Benin (Benin City). Such initiatives should be encouraged and placed more in the context of the Vienna Treaty.

Certainly, as in Germany, the example of Benin and France rests on essential elements of attention that are not primarily political; and this is what makes it very symbolic, I was going to say exceptional and historic, in the light of the value of the property in question.

- The will at the highest level of the States (the Heads of State), giving rise to frank and open dialogue(s);
- A will shared with the people, the Nation (the Senate, the Parliament, the communities);
- A will translated into a "political commitment": intervention of the legal field.
- Result: We manage to bridge the cultural gaps by sowing more seeds of peace and deep identity references.

This panel, for us, at least as far as I am concerned, is a call to return to those age-old values of dialogue, awareness and responsibility towards history and our living together.

For those for whom this is difficult, there is an international instrument to ratify. Join us in improving the Vienna Convention of 1983.

Thank you.