

# INTERVIEW

Alexandra Xanthaki\* talks to Evelien Campfens,\*\*  
Surabhi Ranganathan,\*\*\* Andrzej Jakubowski,\*\*\*\*  
and Alicja Jagielska-Burduk\*\*\*\*\*

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## Colonial Loot and Its Restitution – the Role of Human Rights

**Evelien Campfens, Surabhi Ranganathan, Andrzej Jakubowski, and Alicja Jagielska-Burduk (Eds):** Thank you very much for taking the time to talk to us. As UN Special Rapporteur in the Field of Cultural Rights you currently hold an extremely important office. Could you please briefly describe your mandate and elaborate on the question to what extent it includes restitution of colonial cultural losses?

**Alexandra Xanthaki (AX):** My mandate was created in 2009 and is one of the around fifty mandates within the UN Special Procedures. About fourteen of those are country mandates

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and the rest are thematic mandates. Issues of restitution of colonial cultural losses do fall within the mandate of the Special Rapporteur in the Field of Cultural Rights, as they relate to cultural rights. My mandate does not have one specific legal basis, but it relates to the human rights standards in general that have been set in relation to cultural rights. One of the most solid bases that I use is Article 15 of the International Covenant on Economic, Social and Cultural Rights. Besides, the Convention on the Elimination of All Forms of Racial Discrimination is important, as well as Article 27 of the International Covenant on Civil and Political Rights, and other instruments. Although issues concerning culture also fall within the mandate of UNESCO, one has to make the distinction between my mandate that focuses on the right of individuals and groups, whereas at the center at UNESCO is the protection of the culture per se. So, the focus of my mandate is anthropocentric: rights of individuals or groups of individuals.

**Eds: So, what, in your view, underpins calls for the restitution of colonial cultural losses, for example cultural objects like the Benin Bronzes? And why is restitution important? Should it be seen as reparation for past injustices or more as restitution of property rights to dispossessed owners?**

**AX:** Restitution of colonial cultural losses relates to the right to cultural heritage, that concerns the right of individuals or groups to connect the past with the present and aspire to the future. The first UN Special Rapporteur in the Field of Cultural Rights, Farida Shaheed, described cultural rights as being about the right to aspire and of course we can only look at the future if we feel secure in our past. The issue of restitution of colonial cultural losses is very important because it relates in this sense to who we are, who we have been, and what are our philosophies and our views. Individuals and groups are not static but they evolve; cultures and cultural frameworks likewise evolve, and cultural heritage helps us to better understand who we are. Besides, I think it is very important because the return of cultural heritage, the cultural objects, means dealing with past injustices of colonialism. For those who will have their cultural heritage returned, the cultural objects, this is a recognition of what has happened in a bleak past. But I think it is also important for the people who give them back because they recognize what has happened at last. In that regard, in November 2022 on my first official visit to Germany, I heard how German officials were moved during the ceremony of the Return of the Benin Bronzes. I felt that they were trying to do something as a former colonial power to enforce justice for the wrongs of the past.

So, I think that for these reasons, restitution is important. But of course, restitution also has other tangible aspects. We have to recognize that these cultural objects,

as exhibits in major museums, often bring in resources. So, the benefits, the practical benefits, are very often restricted to the Global North, whereas such cultural objects come from all over the world. In discussions in the Global North, I often hear the argument that people focusing on these aspects should not be pedantic, but yes, let's be pedantic because according to international standards, groups and individuals have the right to benefit from their own cultural heritage. Although this practical aspect is not often mentioned, I think it is also important.

**Eds:** In this regard, we would like to ask to whom, in your view, restitution is owed: is it national governments of postcolonial states (as in the interstate [UNESCO model) or communities (as might follow from the community-based model of the *United Nations Declaration on the Rights of Indigenous Peoples* [UNDRIP])? In other words, who should be seen as the “right holders” to cultural heritage and who should have standing in restitution procedures?

**AX:** This is an interesting and important question. I think that so far, UNESCO has, in a way, hijacked the debate. A lot of states have been very comfortable with UNESCO dealing with these issues because, of course, UNESCO instruments and UNESCO as an organization focus on the state. However, when it comes to restitution as an issue for the interstate level, this ignores human rights standards in the area of culture. Cultural rights are very clearly rights of the individual and of groups to their cultural heritage and this includes rights to objects that belong to them but are not under their possession, even though we do not have a very clear, explicit, obligation or right. That is why UNDRIP is so important. I have said, before I took on this role, in my previous life, again and again how the standards of UNDRIP are important. Not only for Indigenous peoples, but also more generally, because as a model they push forward certain standards of human rights. I think that here we have a very clear example: UNDRIP is much more explicit in the right of groups to restitution of their lost cultural objects. I think that we can take this as an example, and we could make this debate more about rights and states obligations under human rights standards. Because if we do not do that and relate them to the UNESCO standards, the level of commitment is between states. And this may ignore the actual owners of these colonial cultural losses. Sometimes such objects belong to whole populations of states in which case UNESCO standards may be more important and clearer, but very often cultural objects belong to groups within states, in which case these have to be returned to these groups. These groups should have a say in restitutions procedures. Nevertheless, it is very important to keep in mind that these issues are not black or white. There are so many aspects when it comes to restitution; we should continue the discussion and bring it forward. In that respect

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I think this is unfortunate that some states are reluctant in that regard. In sum, my view is that it is very important that the discussion starts being more mainstream within the human rights' framework.

**Eds: Do you see differences between the so-called settler states and Western European states in approach to the topic? So, where settler states perhaps have more experience in the human rights' (UNDRIP) model, taking groups as rights holders is endorsed to a greater extent while in European states, the intergovernmental model seems more in focus.**

**AX:** I am not sure. We see these examples of restitution, for example in Germany, that are very positive and that may open the debate in Europe. And in general, I think that settler states are more open to Indigenous claims, although I'm not sure how open they are to a wider discussion on restitution. Thinking about it loudly, maybe you are right that settler states are taking up a more positive role from the perspective of a human rights' model. Perhaps because Indigenous peoples' rights are seen as a special case. Restitution beyond the state level seems limited to Indigenous peoples, as a special case; by implication, no other group gets the benefits from these standards. We should resist that distinction: Indigenous cultural rights – i.e., rights to restitution given by UNDRIP – should be seen as part of the human rights system that is meant to benefit other groups as well. I think nevertheless that we should try and find good practice everywhere. At the same time, maybe it is time to gradually have a more sustainable, coordinated, coherent model of cultural rights relating to these issues.

**Eds: Do you think that there might be a danger that the focus on objects might obscure other concerns, such as around intangible cultural heritage? And do concepts of appropriation and ownership and restitution apply to intangible heritage with equal force?**

**AX:** My experience so far is that, unfortunately, discussions are focused only on tangible heritage. Cultural heritage is still mostly seen as tangible heritage and as belonging to states. I think that many states, or at least the states that are vocal, refer to cultural heritage when it comes to the state level and only refer to cultural rights when it comes to the group level. This shows a very elitist understanding of what cultural heritage is about, and this trickles down to issues relating to restitution.

Intangible cultural heritage is very important and concepts of appropriation and ownership and restitution do apply to intangible heritage as well. The United Na-

tions and my mandate try, where possible, to link intangible to tangible aspect. Although this is an even more difficult discussion, I think it is indeed, as you said, very relevant.

**Eds: As a follow up on this: do you think sometimes the debate is too much focused towards restitution and ownership, and that perhaps it should be more about participation or the right to access to cultural heritage?**

**AX:** I think that there are some valid points made by the ones who resist restitution. Archaeologists may very genuinely argue that we cannot always send back objects. First of all, because of the danger of tribalism. Secondly, because we're in a globalized world. Maybe we should accept that in general, not all objects should go back. So, when I put the cynicism aside, I think that we have to discuss and we have to take into account genuine arguments and that we have to be cautious about how and to what extent we want to achieve restitution. In that context the question about participation is indeed very important. What a lot of people were saying to me during my visit to Germany is that it is about their participation in the narrative of exhibits that belong to their past, not always about the return of the objects. Experts may not fully understand the importance of these exhibits or the extent of some specific issues. So, indeed, I think that participation is essential. I really believe that participation is the most important principle that has not taken central place yet when it comes to questions surrounding restitution. And also benefits should be discussed with the relevant groups. One can pose the question whether a specific community would prefer its cultural objects to be exhibited somewhere where possibly it is going to get a large audience. But then it should be explained to the visitors what the object is about, and the group should share in the benefits of having all these millions of people coming through every day to the museum. In that way communities of origin are connected with the outcome of their past.

These are nuanced issues. I wonder whether maybe we, and also I as an expert, because of our wish to see the past injustices recognized, acknowledged, and reversed as much as possible, have made the debate very binary, and by making it binary, we make it very political. And by making it political, we may tend to lose the nuances and a positive outcome sometimes.

**Eds: This relates to the next questions as well. How do you perceive recent developments? Is there a danger that, while there is some action in terms of the return of specific objects, the issue of return is being turned into one of moral ethics and ad-hoc politics, rather than being seen as legal obligation? Or do you see the seeds for the emergence of a new general legal obligation?**

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**AX:** As to the first question, in general I am positive about new developments. I am delighted with what I saw in Germany. First of all, with the return of the Benin Bronzes. But what I am most delighted with is that the understanding that the German society as such – and this is also true for some other parts of the world – is clear: these objects have to be returned and this is just the start and falls into a much wider debate on colonialism and cultural heritage. Whenever there is a resistance to the restitution debate, the society itself pushes for the debate to take place and to continue. In that sense, I am very positive.

However, I also notice that this is not seen as a legal obligation by states. Processes do not take place within the realm of UNESCO or human rights standards but still as part of moral ethics. In itself this is fantastic because, at the end of the day, law has to follow ethics. On the other hand, then return depends on the goodwill of some states in the North, whereas really, colonialism was the outcome of arrogance, so these debates have to be seen as part of the legal obligations that states have. Unfortunately, specific obligations when it comes to human rights in this field are not very clear. Therefore, I think that recent scholarly work, and to a degree my work and the work of the interested parties themselves, for example the Indigenous peoples, minorities, and migrants, is very important to continue to educate states and say to them, no. No: this is part of your obligation to respect the right to participate in culture and the right culture and non-discrimination when it comes to cultural activities, et cetera. I think that this is important.

Now as to your question whether is it important to have a new general legal obligation? I am generally the one that says that no, we have enough instruments and let's capitalize on those. We have not really done so yet. But on this specific issue, I wonder whether perhaps indeed we need to make things clearer and more obvious. On the other hand, I'm not sure that states will accept a new instrument that will not weaken the existing derived legal obligations. So I'm in two minds. I think that what needs to be done is more clarification and contextualization of existing standards to relate to these points, and gradually gain momentum to arrive eventually at a general legal obligation. But I would urge that to be a human rights legal obligation. I think that also in terms of enforcement, the human rights system with its monitoring bodies may be more helpful in this respect. As far as my mandate is concerned, we do get communications that relate to restitution. Of course these are confidential, but definitely it is a priority of the mandate. This is a very current and relevant issue that cannot be ignored anymore.

**Eds:** That is an important and useful statement in terms of possibilities for interested parties on how to proceed with their claims. We had a final, more general question, focused on Ukraine if you allow us. Could you refer to your current work

**on cultural rights of migrants and how you are addressing this issue in light of the war in Ukraine and the refugee crisis?**

**AX:** I am very sensitive to the war in Ukraine. I have joined a statement very early on, and followed it up with a public statement where I said that culture should be used as a point of bringing people together and not as a tool of hatred. We know that the destruction of cultural objects varies, but definitely more than 250 monuments and cultural sites – Ukraine itself talks about around 1000 cultural properties – have been destroyed. We continue to be present and interested.

However, my upcoming report on migrants and cultural rights is of course wider than focusing just on Ukraine. The war in Ukraine is not the only war in the world, and funds from NGOs and states have left the artists from Afghanistan in order to be redirected towards Ukrainian artists. Other wars may not be given attention at all, although they also create migrants and refugees. So, I think that in this respect I'm trying hard to keep the balance. I understand that every war brings up the nationalistic feelings of the country under occupation and that it makes sense to do so – how else would they make these amazing sacrifices that they make? At the same time, we have to be very clear that in the postwar Ukraine the multicultural essence should be maintained, and this included Russians and Russian cultural heritage in the same way that they included migrants' cultural heritage. Where NGOs, for very good reason at the moment focus on protecting the destruction of cultural heritage in Ukraine, my role, I think, should be to maintain the nuances.

In terms of my report, I will address the situation in Ukraine but I will also refer to migrants from other places. My report will focus on migrants' right to participate in the cultural life, not as passive observers, but as active partners in changing the vision of the society and the culture of the mainstream society, to enable a fusion of cultures. At the same time, they have the right to have their cultures and cultural expressions protected. A second focal point will be migrants' cultures that are very often dehumanized. Seeds of liberal practices are used and emphasized in order to dehumanize them for political reasons. This we have seen and see today in Europe. In this regard, I don't like a dichotomy between the "good" Ukrainian migrants as opposed to those from Asia. We should not discriminate in policies regarding refugees.

**Eds:** Thank you very much for your views and we look forward to engaging with your new report. Finally, we would also like to ask you, given the huge operation and big responsibility of your mandate, how many people you have on the team?

**AX:** Regrettably, it is a rather small team. However, I am truly lucky to work with two eminent experts in the field of cultural rights: Johanne Bouchard, an anthro-

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pologist, and Mylène Bidault, a lawyer. They both have an impressive experience in the area of social and cultural rights, and have for long worked for the Office of the UN High Commissioner for Human Rights in support of the special procedure in the field of cultural rights. Also, I am actively supported, to a much bigger degree than I thought I would be, by the United Nations administration. But the reality is that this is a full-time job, also because the vision that I have for my six years is to improve the visibility of cultural rights. Unfortunately, cultural rights are still the Cinderella of human rights.

This means that we have to deal with a very broad mandate. I am incredibly lucky with this role and I am convinced that this mandate can bring a bit of change. However, we would very much welcome states that want to give us kind of additional support. Also, I have used a lot of experts, like some of you, but also some academic institutions, to do background research for the mandate without any benefits. In the same way, I have to tell you that these positions are not paid to ensure we are independent, and I am amazed at how many people are helping.

**Eds: We would just like to mention that in 2019 SAACLR published an interview with Johanne Bouchard and Mylène Bidault who talked to Beatriz Barreiro Carril on the operation of the mandate of the UN Special Rapporteur in the Field of Cultural Rights.<sup>1</sup> Indeed, you form an amazing trio of experts!**

**Thank you again for your time and most valuable, and thought-provoking comments.**

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<sup>1</sup> See "The Meaning of Culture from a Human Rights Approach: The Mandate of the UN Special Rapporteur in the Field of Cultural Rights". Mylène Bidault and Johanne Bouchard talk to Beatriz Barreiro Carril, "Santander Art and Culture Law Review" 2019, Vol. 5(2), pp. 25-34.