

IMPLEMENTING INTERNATIONAL CONVENTIONS ON THE PROTECTION OF CULTURAL PROPERTY IN NIGERIA: AN EXIGENT NECESSITY

By

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Abstract

The destruction, looting and confiscation of cultural property during World War II necessitated the adoption the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict. The illicit and illegal trafficking and import and export of stolen cultural property also led to adoption of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and subsequently the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. Nigeria's cultural property through time has been and is still being destroyed, stolen, illegally trafficked, imported and exported. Nigeria has acceded and ratified the three significant international conventions on the protection of cultural property but has done little in implementing their provisions. This paper highlighted the destruction, theft and illegal trafficking of Nigeria's cultural property. It examined three significant international conventions on protection of cultural property and Nigeria's non implementation of the conventions. It also considered the prospects of implementing the conventions as done in some jurisdictions. The paper concluded that Nigeria needs to implement salient provisions of the international conventions on protection of cultural property.

Keywords: Cultural property, Conventions, Illegal trafficking, Implementation, Protection.

1.0 Introduction

The fact that cultural property of several nations has been and is still being adversely affected by war, illicit trafficking and theft cannot be over-emphasised.¹ This led to the

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¹C.V. Hill, 'Killing A Culture: The Intentional Destruction of Cultural Heritage in Iraq and Syria under International Law', (2016) 45 Georgia Journal of International and Comparative Law, 191-220; A. Carstens, 'The Hostilities-Occupation Dichotomy and Cultural Property in Non-International Armed Conflicts', (2016) 52 Stanford Journal of International Law, 1-50, 3. The destruction, looting and theft of cultural property in Syria, Iraq, Egypt, Mali and Nigeria are some examples of non-international armed conflicts.

adoption of some international conventions dealing with the protection of cultural property. The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict² (1954 Hague Convention) was developed after World War II in response to a new style of war in which cultural property was intentionally targeted by the Nazis.³ The 1954 Hague Convention coined the term "cultural property" and was the first international convention to deal exclusively with the protection of cultural property.⁴ This Convention and its two protocols obligate parties to safeguard cultural property within their territory in times of peace, and to prevent the targeting, theft, misappropriation or destruction of cultural property during wartime.⁵ In 1970, United Nations Educational Scientific and Cultural Organisation (UNESCO) adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property⁶ (1970 UNESCO Convention). The 1970 UNESCO Convention seeks to prevent states from acquiring stolen or illegally exported cultural products.⁷ The 1970 UNESCO Convention was forwarded largely by assertions by once-colonised states about the flow of objects of cultural patrimony associated with these source-nations to wealthier market nations. The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995 UNIDROIT Convention) was adopted to complement the 1970 UNESCO Convention. The concern about the illicit trade in cultural objects and the irreparable damage frequently caused by it, both to the objects themselves and to the cultural heritage of national, tribal, indigenous or other communities, and also to the heritage of all peoples, and in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information led to its adoption. It set out to contribute effectively to the fight against illicit trade in cultural objects by taking the important step of establishing common, minimal legal rules for the restitution and return of cultural objects between state parties, with the objective of improving the preservation and protection of the cultural heritage in the interest of all. It initiates a process that will enhance international cultural co-operation and maintain a proper role for legal trading and inter-State agreements for cultural exchanges. In spite of these Conventions on protection of cultural property, the recent spate of incidents involving the destruction of cultural property in non-international armed conflict from Syria to Iraq, Mali, Yemen and Nigeria demonstrates the extent to which the protection of cultural property is now regarded as a matter of international concern.

²Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240.

³J.H.Merryman, 'Two Ways of Thinking about Cultural Property' (1986)80 American Journal of International Law, 831, 835-36.

⁴L.V. Prott and P.J. O'Keefe, 'Cultural Heritage or Cultural Property' (1992) 1 International Journal of Cultural Property, 307, 312.

⁵ Arts 3 and 4 1954 Hague Convention.

⁶ UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, November 14, 1970, 823 U.N.T.S. 231 (1970 UNESCO Convention).

⁷ Art 7 1970 UNESCO Convention.

Illegal trafficking and theft of cultural property of nations have also not ceased. Nigeria's cultural property through time has been and is still being destroyed, stolen, illegally trafficked, imported and exported.

Although Nigeria acceded to the 1954 Hague Convention and its first Protocol on 5 June, 1961 and ratified the Second Protocol on 21 October, 2005, ratified the 1970 UNESCO Convention on 24 January 1972 and acceded to the 1995 UNIDROIT Convention on 10 December, 2005, it has done little to implement salient provisions of the Conventions. Shyllon states that it does not appear that any country in Africa that is a State Party to the 1970 Convention, whether south of the Sahara or not, has any implementing legislation for the proper operation of the Convention in their countries.⁸ He states further that although Nigeria was the third member nation that ratified the 1970 Convention on 1 January 1972, it has done very little to implement the Convention.⁹ More so, Nigeria's 2011-2015 National Report on the Implementation of the 1970 UNESCO Convention clearly shows that Nigeria has done next to nothing on the implementation of the international conventions on protection of cultural property to facilitate repatriation and to curb the illegal trafficking of her cultural property.¹⁰ At an International Conference on 'the Safeguarding of Cultural Heritage in Conflict Areas' held at Abu Dhabi, United Arab Emirates in 2016, the Minister of Information and Culture, Alhaji Lai Mohammed reiterates the fact that Nigeria is a Party to all Conventions protecting cultural property from threat and destruction, and that the Conventions are in the process of domestication. He states that "in addition to joining the treaties, it must be emphasised that nations must adopt or receive the Conventions into their domestic laws."¹¹ However, about four years after the Conference, the Conventions have not been domesticated in Nigeria. The current legislation for the protection of both moveable and immovable cultural property in Nigeria is the National Commission for Museums and Monuments (NCMM) Act 1979.¹² The NCMM Act is obsolete and Adebisi puts it succinctly when he states that the NCMM Act "is generally regarded as being out of tune with the demand of the present era ... and can be described as antiquated ... it is porous for it has many lacunae."¹³

⁸F. Shyllon, *Cultural Heritage Law and Management in Africa* (Lagos, Centre for Black and African Arts and Civilization, 2013), 38.

⁹Ibid, 29.

¹⁰Nigeria's National Report on the Implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 2011 – 2015 <<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/RapportNigeriaWeb01.pdf>> accessed 12 August, 2020.

¹¹'Minister Calls for Awareness Sensitization on Protection of Cultural Heritage', 3 December 2016, International Conference on the Safeguarding of Cultural Heritage in Conflict Areas held at Abu Dhabi, United Arab Emirates from 2-3 of December 2016, <<http://www.vanguardngr.com/2016/12/minister-calls-awareness-sensitization-protection-cultural-heritage/>> accessed 9 August 2020.

¹²Now Cap N19 Laws of the Federation of Nigeria 2004.

¹³B.E. Adebisi, "Towards the Perfect Law in Heritage Protection and Management in Nigeria" (Abuja TAN Limited, 2013)10. Ibid.

2.0 Definition of Cultural Property

Cultural property is a part of the wider concept of cultural heritage. Cultural heritage comprises of tangible and intangible elements of culture. Cultural property refers to the tangible elements of cultural heritage which could be movable or immovable. They are products which showcase man's creative ability "invested with cultural significance in a society."¹⁴ Cultural property is an overt mark of the identity of the society that produce it and a "repository of cultural and traditional information."¹⁵

Article 1 of the 1954 Hague Convention defines cultural property as follows:

The term 'cultural property' shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.

The 1970 UNESCO Convention defines cultural property as property which is designated by a State¹⁶

as being of importance for archaeology, prehistory, history, literature, art or science and which can include flora, fauna, and minerals; objects relating to historical, archaeological, ethnological, or artistic interest; rare manuscripts, statuary, and stamps; photographic and cinematographic archives; antiquities and furniture over 100 years old; and much else.

¹⁴Riches Resource, 'Tangible Cultural Heritage and Intangible Cultural Heritage' 27-11-2014, <<http://resources.riches-project.eu/glossary/tangible-and-intangible-cultural-heritage/>> accessed 26 December, 2020.

¹⁵ R. Clements, 'Misconceptions of Culture: Native Peoples and Cultural Property Under Canadian Law' (1999) 10 University of Toronto Faculty of Law Review, 49.

¹⁶Art 1 1970 UNESCO Convention.

The 1995 UNDRIT Convention refers to cultural property as cultural objects and defines cultural objects as those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to the Convention.¹⁷ Unlike the 1970 UNESCO Convention, 'cultural objects' defined and protected under the 1995 UNDRIT Convention need not be 'specifically designated' by state parties. Thus, a wider range of objects are included for protection.

3.0 Destruction, Theft and Illegal Trafficking of Nigeria's Cultural Property

According to Agbedeh, several important Nigerian cultural property, such as masks, bronze sculptures, ivory pieces, ancestral drums, Esie soap-stones, Oron monoliths, Igbo Ukwu artifacts, Benin bronze, Nok terracotta pieces, Awka traditional door posts, Ife sculptures, amongst others have been stolen and smuggled out of the country.¹⁸ The British invasion of the Great Benin Empire in 1897 saw tens of thousands of works of art in wood, ivory and bronze looted and first removed to London by the British punitive expedition as spoils of war, from where they were dispersed throughout the world.¹⁹ By 1960, Nigeria's antiquities had been swept into full tide of commerce, and the high demand for them in Europe and America fueled the looting and export of her cultural property.²⁰ The Nigeria Civil War between 1967 and 1970, Niger Delta crisis, Jos religious crisis, and the Boko-Haram crisis in recent times have also brought stories of woes to the tangible aspects of Nigeria cultural heritage.²¹ Communal and ethnic conflicts continue to create havoc on Nigerian's cultural property. Also, religious fundamentalism have taken their toll, with deliberate burning and destruction of monuments, shrines and sacred places considered offensive and heretical to the new belief systems of the resurgent religions.²²

Recently, one of the UNESCO World Heritage Sites located on the hills above the village of Sukur in Madagali Local Government Area of Adamawa State in North

¹⁷These include ... products of archaeological excavations... elements of artistic or historical monuments or archaeological sites which have been dismembered; antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; objects of ethnological interest; property of artistic interest, such as: pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); original works of statuary art and sculpture in any material; original engravings, prints and lithographs; original artistic assemblages and montages in any material; rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; postage, revenue and similar stamps, singly or in collections; archives, including sound, photographic and cinematographic archives; articles of furniture more than one hundred years old and old musical instruments and rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest.

¹⁸T. Agbedeh, 'How Nigeria loses her Priceless Cultural Objects, National Mirror Newspaper, 2011 May, 12, 23.

¹⁹F. Shyllon, *Cultural Heritage Law and Management in Africa* (Lagos, Centre for Black and African Arts and Civilization, 2013), 85- 86.

²⁰Ibid, 90.

²¹C.J. Abara, 'The Challenges of Safeguarding and Securing Cultural Property' Proceedings of the II International Conference on Best Practices in World Heritage: People and Communities, held in July, 2015 at Menorca, Balearic Islands, Spain.

²²Ibid.

Eastern Nigeria situated in the Mandara Mountains close to Nigeria border with Cameroon, the Sukur Heritage Site with its inscription based on the cultural heritage, material culture, and the naturally terraced fields was destroyed by Boko Haram insurgents.²³ It is the first African cultural landscape to be inscribed in the World Heritage List. In June 2020, Christie's, a renowned auction house sold two sculptures belonging to Nigeria's Southern Igbo Community which were removed²⁴ from the community during Nigeria's civil war in the 1960s.

4.0 Some International Conventions Protecting Cultural Property

4.1 1954 Hague Convention on the Protection of Cultural Property in the

Event

of Armed Conflict

The Preamble of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) states that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world."²⁵ It requires state parties not only to establish within their militaries units trained to protect cultural property during times of armed conflict, but also to take peacetime measures to identify and safeguard significant works of cultural property.²⁶ Article 2 states that the protection of cultural property shall comprise the safeguarding and respect for such property.

Under the 1954 Hague Convention, each State must act to safeguard its own cultural property against armed attack. Parties to an armed conflict are not allowed to direct hostilities against cultural property and must avoid incidental damage to such property.

Article 4 prohibits the use of cultural property for military purposes. However, attack on cultural property may be lawful if such property has been turned into a military objective and an attack would be required by imperative military necessity. Occupying powers must protect cultural property under their control from theft, pillage or misappropriation.²⁷ Article 3 provides that preparatory measures should be taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict. Article 19 provides that the provisions of the Convention shall also apply to armed conflict which is not international in character but within the territory of a State party.

4.2 First and Second Protocols to 1954 Hague Convention

The First Protocol 1954 generally deals with issues relating to the protection of movable cultural property, control and prevention of export during a conflict, and return of such property to the territory of the State from which it was removed, at the end of the

²³ Ibid.

²⁴ C. Olulode, 'Nigeria Saddened by Christie's Sale of Looted Statues' <<https://www.bbc.com/news/world-africa-53218138>> accessed 28 August 2020.

²⁵ Para 2 Preamble 1954 Hague Convention.

²⁶ Arts 3 and 7 1954 Hague Convention.

²⁷ Art 4(3) 1954 Hague Convention.

conflict. The first paragraph of Section I of the First Protocol requires each Party to prevent the exportation of cultural property from territory occupied by it during armed conflict. Paragraphs 2 and 3 impose obligations on the other Parties to the Protocol to take into custody any cultural property imported into its territory by the occupying power. Paragraph 4 states that the Party whose obligation was to prevent the exportation of cultural property from the territory occupied by it shall pay an indemnity to the holders in good faith of any cultural property which has to be returned in accordance with paragraph 3. Section II provides that cultural property shall be deposited with another state party for the purpose of protecting such property against the dangers of an armed conflict. It shall be returned by the latter, at the end of hostilities to the competent authorities of the territory from which it came.

The Second Protocol 1999 amplifies the existing provisions of the Convention and it further elaborates the provisions of the Convention which are related to the safeguarding of and respect for cultural property, providing greater protection than in the past. Moreover, it establishes a new category of enhanced protection. Article 7 provides *inter alia* that:

... each Party to the conflict shall: a. do everything feasible to verify that the objectives to be attacked are not cultural property protected under Article 4 of the Convention; b. take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental damage to cultural property protected under Article 4 of the Convention; c. refrain from deciding to launch any attack which may be expected to cause incidental damage to cultural property protected under Article 4 of the Convention...

Article 8(a) and (b) provides that the Parties to the conflict shall, to the maximum extent feasible: remove movable cultural property from the vicinity of military objectives or provide for adequate *in situ* protection; avoid locating military objectives near cultural property. A Party in occupation of the whole or part of the territory of another Party shall prohibit and prevent in relation to the occupied territory any illicit export, other removal or transfer of ownership of cultural property, any archaeological excavation, save where this is strictly required to safeguard, record or preserve cultural property and any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.²⁸

Article 10 provides that cultural property may be placed under enhanced protection. It must also not be used for military purposes or to shield military sites. By virtue of Article 12, the Parties to a conflict shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack or from any use of the property or its immediate surroundings in support of military action.

²⁸Article 9 (a)-(c) Second Protocol.

The Protocol underscores the sanctions for serious violations and defines the conditions for the application of criminal responsibility. Article 15 (1) (a)-(c) provides that any person commits an offence within the meaning of this Protocol if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts:

- a. making cultural property under enhanced protection the object of attack;
- b. using cultural property under enhanced protection or its immediate surroundings in support of military action;
- c. extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;
- d. making cultural property protected under the Convention and this Protocol the object of attack;
- e. theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected in this Convention.

Furthermore, the Second Protocol is much more detailed regarding the range of peacetime safeguarding measures that States should adopt, and includes such measures as the preparing of inventories, plans in relation to protection of buildings against fire or structural collapse and evacuation plans for movable cultural property.

4.3 1970 UNESCO Convention

During the 1960s, concerns arose regarding the importation of cultural property into various countries that had been illegally removed from the country of origin.²⁹ Due to the ever-increasing theft and illegal export of cultural property that had greatly endangered efforts to protect cultural property, UNESCO adopted the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property³⁰ (1970 UNESCO Convention) at its 16th session on 14 November 1970 in Paris.

The 1970 UNESCO Convention defines cultural property, lays down basic measures for prevention, restriction, protection and recovery of cultural property and establishes principles for international cultural property exchange. The Convention requires state parties to adopt appropriate national legislation to protect national cultural property, prevent the illegal export and transfer of cultural property and establish moral principles for cultural property exchange. It also requires states in accordance with domestic legislation to prevent the import of cultural property illegally exported from other state parties. State parties are to prohibit the export of cultural property without an export license. Particularly, article 6 establishes an export licence system to prevent the export of cultural property without such licences.

²⁹ M.E. Phelan, 'Cultural Property: Who Owns It and What Laws Protect It?', (2011) 74 Texas Bar Journal 202, 205, the United Nations General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples. In the following years, the newly independent States were anxious to recover important items from their cultural heritage, many of which were to be found in museums of the former colonizing states. The newly independent States feared the further loss of cultural heritage, due to looting and inadequate funds for protection.

³⁰ UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, November 14, 1970, 823 U.N.T.S. 231.

Articles 7 and 9 of the 1970 UNESCO Convention are the major substantive provisions and they emphasise the need for international cooperation in the preservation of cultural property. Article 7 is concerned with import restrictions. Article 7(a) provides that States Parties undertake (a) to take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Article 7(b) which contains two complementary subparts provides that: States Parties to this Convention undertake:

- (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution; (ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned

While article 7(b)(i) requires states to prohibit the import of cultural property stolen from a museum or other public institution, article 7(b)(ii) requires states "to take appropriate steps to recover and return" such property. However, to fall within the protection of Article 7(b), cultural property must have been: stolen after the entry into force of the Convention; removed from a museum or similar institution and documented as belonging to the inventory of that institution provided that the requesting state shall pay just compensation to the innocent purchaser. Thus, cultural property not stolen from a public institution could still be legally imported.³¹ The requirement that states must pay compensation to the innocent purchaser of cultural property has also been criticised by source nations, many of which lack sufficient economic resources to satisfy the high prices of the international art market.³²

Article 9 encourages multilateral action when a state's cultural patrimony is in danger. It provides that:

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned.

³¹R.D. Abramson and S.B. Huttler, 'The Legal Response to the Illicit Movement of Cultural Property' cited in K.F. Jowers, 'International and National Legal Efforts to Protect Cultural Property: The 1970 UNESCO Convention, the United States and Mexico' (2003) 38, 145, 153.

³²K.F. Jowers, 'International and National Legal Efforts to Protect Cultural Property: The 1970 UNESCO Convention, the United States and Mexico' (2003) 38 *Texas International Law Journal*, 145, 153.

The provision is, however, limited to archaeological or ethnological materials.³³ Article 15 of the 1970 UNESCO Convention provides that nothing in the Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of the Convention.

4.4 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

Recognizing the need to establish a comprehensive mechanism to prescribe clearer obligations with respect to the protection of cultural property against theft and illegal export, the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995 UNIDROIT Convention) was drafted and finally adopted on 24 June 1995 in Rome. The 1995 UNIDROIT Convention intends to facilitate and expedite the recovery and return of stolen and illegally exported cultural property. Article 3(1)-(2) provides that the possessor of a cultural object which has been stolen shall return it and a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place. Thus, once a State's law pronounces that all cultural property on or beneath the ground belongs to the State, it shall be said to be stolen if retained even where there has been a lawful excavation.

Paragraph 3 provides that any claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft. Some commentators point out that this Convention strikes a delicate balance between compulsory return and compensation for a bona fide purchaser.³⁴ In determining whether the possessor exercised due diligence, paragraph 4 provides that regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances. The case of *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts Inc.*³⁵ is illustrative and sheds light on the fact that in some jurisdictions, a thief obtains no title to or right to possession of stolen items and therefore cannot pass any right of ownership of stolen items to subsequent purchasers whether the purchasers are acting in good faith or not. In this case, Goldberg purchased Byzantine Mosaics. She took the Mosaics to United States. She then wanted

³³P.M. Bator, 'An Essay on the International Trade in Art', (1982) 34 Stanford Law Review, 275, 340.

³⁴I.M. Goldrich, 'Balancing the Need for Repatriation of Illegally Removed Cultural Property with the Interests of Bona Fide Purchasers: Applying the UNIDROIT Convention to the Case of the Gold Phiale' (1999) 23 Fordham International Law Journal, 118 at 163.

³⁵717 F. Supp. 1374 (S.D.Ind.1989)

to sell them to the Getty Museum in U.S.A. Cypriot officials got to know that the objects were with Goldberg who was holding them in Indianapolis. She gave evidence that she was shown export documents from Cyrus and purchased them for \$1.08 million. Under the law in Indiana, a thief obtains no title to or right to possession of stolen items and therefore cannot pass any right of ownership of stolen items to subsequent purchasers whether the purchasers are acting in good faith or not. Thus, because the Mosaics were stolen from the rightful owners, the Autocephalous Church of Cyrus, it was held that Goldberg never obtained title to or right of possession of the Mosaics. The case was decided in favour of Autocephalous Church and was awarded possession.

Article 5 (1) allows a Party to request the court or other competent authority of another Party to order the return of a cultural object illegally exported from the territory of the requesting State. In the same vein, paragraph 2 provides that a cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration under a permit issued according to its law regulating its export for the purpose of protecting its cultural heritage and not returned in accordance with the terms of that permit shall be deemed to have been illegally exported. Paragraph 3 provides that the court or other competent authority of the State addressed shall order the return of an illegally exported cultural object if the requesting State establishes that the removal of the object from its territory significantly impairs one or more of the following interests: (a) the physical preservation of the object or of its context; b) the integrity of a complex object; (c) the preservation of information of, for example, a scientific or historical character; (d) the traditional or ritual use of the object by a tribal or indigenous community, or establishes that the object is of significant cultural importance for the requesting State.

Although paragraph 1(b) of Article 7 provides that the provisions shall apply to an object that was exported during the lifetime of the person who created it or within a period of fifty years following the death of that person, paragraph 2 states that it shall apply where a cultural object was made by a member or members of a tribal or indigenous community for traditional or ritual use by that community and the object will be returned to that community.

5.0 Nigerian Legislation on Protection of Cultural Property: The National Commission for Museums and Monuments Act Cap N19 Laws of the Federation of Nigeria 2004

The National Commission for Museums and Monuments Act³⁶ (NCMM Act) is the legislation in Nigeria that provides for the protection of cultural property. However, the term cultural property was not used in the Act. The NCMM Act repealed the Antiquities Act 1953 and the Antiquities (Prohibited Transfers) Act 1974.³⁷ It also abolished the Antiquities Commission and the Federal Department of Antiquities set up under the 1953 Act as agencies of Federal Government responsible for the protection of

³⁶Cap N19 Laws of the Federation of Nigeria 2004.

³⁷Section 31 (1) NCMM Act.

Nigeria's cultural property³⁸ and section 1 of the NCMM Act established the National Commission for Museums and Monuments (Commission) to preserve and protect the country's cultural property. The NCMM Act refers to antiquity instead of cultural property. Section 32 states that: "antiquity" means-

- a) any object of archaeological interest or land in which any such object was discovered or is believed to exist; or (b) any relic of early human settlement or colonisation; or (c) any work of art or craft work, including any statue; model, clay figure, figure cast or rust metal, carving, house post, door, ancestral figure, religious mask, staff, drum, bolt, ornament, utensil, weapon, armour, or craft work is of indigenous origin and - (i) was made or fashioned before the year 1918; or (ii) is of historical, artistic or scientific interest and is or has been used at any time in the performance and for purposes of any traditional ceremony,

To ensure preservation and protection of antiquities, Section 12(1) (c) of the NCMM Act provides that if the Commission considers it expedient that any antiquity (other than a monument) should be preserved in a museum, and with the knowledge of the State Government concerned, may arrange for the purchase or loan of the antiquity and its removal to a national or other approved museum. Section 12(1) (d) provides that the Commission may enter upon any land where archaeological excavations or other operations are being carried on, and inspect same. This is to ensure that the excavation is carried out according to the standard procedure and artifacts are protected in the course of carrying out excavation.

It shall be an offence to destroy, deface, alter, remove or excavate or to transfer the possession of the antiquity to which the notice related except with the permission in writing of the Commission.³⁹ Paragraph 7 provides that the punishment for anyone who is found liable of contravening Section 13(3) shall pay a fine of N200 or be imprisoned for six months or pay such fine and be imprisoned. Paragraph 1 of Section 18 states that any person who wilfully destroys, defaces, alters, removes or excavates any monument, shall be guilty of an offence and shall be liable on conviction to a fine of N1,000 or twice the value of such monument (whichever is higher) or to imprisonment for twelve months or to both such fine and imprisonment.

Section 19(1) provides that no person shall by means of excavation or similar operations search for any antiquities unless authorised by permit issued by the Commission and with the consent of the Government of a State in whose territory the search is to be carried and permit is issued to a competent applicant. A contravention on conviction shall attract a fine of N500 or to imprisonment for six months or to both such fine and imprisonment.

On prohibition of transfer of antiquities, Section 21 (1) (a) and (b) provides that no person shall buy any antiquity unless he is an accredited agent or sell any antiquity to

³⁸ Section 31 (2)-(3) NCMM Act

³⁹ Section 13 (3) NCMM Act

any person other than an accredited agent. Where found guilty shall be liable to a fine of N2,000 or five times the value of the antiquity, or to imprisonment for three years, and the court shall also make an order for the forfeiture of the antiquity connected with the offence to the State. By virtue of Section 22, any police officer may at any time search without warrant any person or the property of any person he reasonably suspects of buying any antiquity while he is not an accredited agent; or selling any antiquity to a person who is not an accredited agent and he may seize anything he reasonably suspects to be an antiquity together with any container in which it is kept. Sub section 3 provides that anything seized under subsection (1) or (2) of this section shall as soon as possible be taken before a magistrate who makes an order for forfeiture if it is established that the thing seized is an antiquity and that it has been bought or sold contrary to the provisions of section 21 of the NCMM Act and that no export permit in respect thereof has been issued by the Commission.

Section 25 (1) of the NCMM Act provides that "subject to the provisions of subsection (4) of this section and to any exceptions which may be prescribed, no antiquity shall be exported from Nigeria without a permit issued in that behalf by the Commission. Section 26(4) provides that any applicant for a permit under subsection (1) of this section, who intentionally destroys or damages the antiquity for which a permit to export from Nigeria has been refused, shall be guilty of an offence and on conviction shall be liable to a fine of N200 or to imprisonment for six months. It suffices to state that the fines for the destruction and damage of antiquities is incredibly ridiculous.

In line with the provision of Article 5 of the 1970 UNESCO Convention, Nigeria has established the National Commission for Museums and Monuments to protect cultural property. The NCMM Act has also complied with Article 6 by providing for export licence which must be issued in respect of any cultural property that is authorised to be exported.

6.0 Non- Implementation of International Conventions Protecting Cultural Property in

Nigeria

In spite of the provisions of the NCMM Act on the protection of cultural property in Nigeria, Nigeria's 2011-2015 National Report on the Implementation of the 1970 UNESCO Convention clearly shows that it has no principal national regulations adopted in order to implement the 1970 and 1995 Conventions and was only in the process of establishing a National Committee for domestication of all UNESCO/UNIDROIT standard setting instruments into National Legislation/Domestic Laws.⁴⁰

In spite of ratification, Nigeria has not domesticated or implemented salient provisions of these Conventions. This is because they have not been domesticated as required by

⁴⁰Nigeria's National Report On the Implementation Of The 1970 Convention On The Means Of Prohibiting And Preventing The Illicit Import, Export And Transfer Of Ownership Of Cultural Property 2011 – 2015, <<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/RapportNigeriaWeb01.pdf>> accessed 12 August, 2020.

Section 12 of the Constitution of the Federal Republic of Nigeria 1999. Section 12 provides that:

"1. No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly. 2. The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty. 3. A bill for an Act of the National Assembly, passed pursuant to (2) of this section, shall not be presented to the President for assent and shall not be enacted unless it is ratified by majority of all the House of Assembly in the Federation."⁴¹

It is only when International Conventions are domesticated that they can have the effect of Law in Nigeria as illustrated in the case of *Abacha v. Gani Fawehinmi*⁴² where it was held that "an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly."

7.0 Prospects of Harnessing International Conventions

The International Conventions on the protection of cultural property have very useful provisions that can help protect Nigerian's cultural property when domesticated or implemented. Some of these provisions shall be considered. One of such is Article 5 of the 1970 UNESCO Convention. Nigeria does not have up to date national inventory of protected cultural property as required by Article 5 of the 1970 UNESCO Convention which provides inter alia that:

"To ensure the protection of their cultural property against illicit import, export and transfer of ownership, state parties to this convention undertake ... to set up within their territories one or more national services ... for the protection of the cultural heritage ... for effective carrying out of the following functions –
...b. establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment on the national cultural heritage..."⁴³

Suffice it to say that registration, documentation and inventory of cultural property has enabled the INTERPOL, ICOMOS, WCO to easily carry out their task of search for stolen cultural property because they could easily be identified. Responding to the question asked in respect of inventories, China in her 2011-2015 Report on the Implementation of the 1970 UNESCO answered by stating that:

"According to the law on protection of cultural relics, museums, libraries and other cultural relics collection units must classify the

⁴¹ CFRN 1999, s 12(1) - (3).

⁴² (2000) 6 NWLR (Pt 660) 228-359.

⁴³ 1970 UNESCO Convention, art 5.

cultural relics in their collection by different grades and compile files for the relics kept. Surveys have been conducted in "Museums to gather data about treasured objects." Nation-wide survey on cultural heritage was carried out between 2007 and 2011 with regard to immovable cultural property and "a nation-wide survey on movable cultural property to inventory all cultural relics kept and collected by state-owned institutions have been launched."⁴⁴

It is also important to state that in compliance with Article 5 of the 1970 UNESCO Convention, Article 26 of the Law of Egypt provides that:

"The Council undertakes enumerating, photographing, drawing and registering immovable and movable antiquities together with gathering information pertaining to said antiquities in registers prepared for such uses..."⁴⁵

The importance of the provision on inventory of protected cultural property is further reflected in "Article 7(b)(i) of the 1970 UNESCO Convention" which provides that:

The states parties to this convention undertake: to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another state party to this convention after the entry into force of this Convention for the states concerned, provided that such property is documented as appertaining to the inventory of that institution.

An example of the importance of having a national inventory is exemplified in the "United States of America Convention on Cultural Property Implementation (CPIA) Act"⁴⁶ which codifies Article 7(b) of the 1970 UNESCO Convention in section 308 of the CPIA which states

"No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this title, or after the date of

⁴⁴People's Republic of China's National Report on the Implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 2011 - 2015

<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Rapport_ChineWeb01.pdf> accessed 14 August 2020.

⁴⁵Law No. 117 of 1983 as Amended by Law No.3 of 2010 Promulgating the Protection of Antiquities Law, (Law of Egypt 2010) <<http://www.antiquities.gov.eg/DefaultEn/Documents/LAW/LAW%20ENGLISH6.pdf>> accessed 15 August 2020.

⁴⁶ Convention on Cultural Property Implementation (CPIA) Act 1983 <<https://eca.state.gov/files/bureau/97-446.pdf>> accessed 15 August 2020.

entry into force of the Convention for the State Party, whichever is later, may be imported into the United States.⁴⁷

It prohibits the importation of stolen cultural property that had been documented in the inventory of a museum or other public secular or religious institution. Thus, for Nigeria to benefit from this, she must have an inventory. It suffices to state that proper documentation and inventory could assist in the repatriation of cultural property or frustrate same. The case of *Peru v. Johnson*⁴⁸ is instructive. In the case of *Peru v. Johnson* where a civil action was brought against Johnson by the Government of Peru to recover cultural objects of Peru imported into the United States and seized by U.S. customs. Evidence was given by an expert witness that the cultural objects belong to Peru because they were of Peruvian style and culture. However, there was no evidence that the cultural objects were documented or inventoried before the said theft (because it was removed from Peru without government permission). Documentation/inventory would have aided Peru's case. The court ruled in favour of the Defendant, Johnson.

Furthermore, the United States' implementation of Article 9 of the 1970 Convention provides a mechanism by which the United States can impose import restrictions on certain categories of archaeological or ethnological materials pursuant to bilateral agreements or Memorandum of Understanding (MOU) with other States Parties or emergency actions.⁴⁹ The United States has entered into bilateral agreements with some nations. These include El Salvador, Guatemala, Nicaragua, Honduras, Peru, Bolivia, Mali, Italy, Canada, Cambodia, Colombia, Cyprus and China. Emergency import restrictions are in effect for Iraq. Nigeria has not tapped into this opportunity provided by United States.

Article 15 of the 1970 UNESCO Convention provides that nothing in the Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of the Convention. This Article invokes international cooperation. Popoola states that "international cooperation is an effective weapon for ensuring the protection of cultural property, sustaining the fight against theft, illicit trafficking, and preventing the loss of cultural identity ..."⁵⁰ The cultural property of African countries and particularly Nigeria carted away before the coming into force of the 1970 UNESCO Convention can rely on this provision to recover their cultural property. The United States has entered into bilateral agreements with some nations. These include El Salvador, Guatemala, Nicaragua, Honduras, Peru, Bolivia, Mali, Italy,

⁴⁷ CPIA 1983, s 308.

⁴⁸ 720 F Supp. 810 (CD. Cal. 1989).

⁴⁹ The CPIA allows the President to impose import restrictions through these agreements without need for Senate ratification of a new treaty. The President's powers under the CPIA have been delegated to the Department of State and the Department of Homeland Security.

⁵⁰ A Popoola, *Africa and International Law in the 21st Century: Something Old and Something New*, Text of the Nigerian Institute of Advanced Legal Studies (NIALS) 2015 Founder's Day Lecture, 16 April 2015 Nigerian Institute of Advanced Legal Studies 2015), 127.

Canada, Cambodia, Colombia, Cyprus, Egypt and China. On 30 November 2016, Egypt and United States of America entered a bilateral agreement to preserve cultural heritage. The restriction of import of illicit cultural property to the United States significantly constrains the global black market given the position of U.S as a leading market for art and antiquities.⁵¹ China in her Report⁵² refers to the ruling of American court in 2011 on 22 Chinese cultural relics illegally exported to the US which dates back to 209 BC to be confiscated and arrangements made to return them to China at the appropriate time.

It is imperative for Nigeria to enter into bilateral and multilateral agreements as provided for in "Article 15 of the 1970 UNESCO Convention" to foster the return of cultural property including those looted before the adoption of the international conventions on the protection of cultural property. More so, the international conventions on protection of cultural property are non-retroactive. Thus, it is important to enter into bilateral agreements with other nations to get back cultural property that were looted or stolen before the adoption of the international conventions.

Nigeria has not implemented the provision of the 1954 Hague Convention and its Second Protocol which requires that preparatory measures should be taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict. If this had been in place, Nigeria's Sukur World Heritage site destroyed by the Boko Haram in 2013 would have been protected and preserved. Furthermore, Article 28 of 1954 Hague Convention provides that States are to take, within the framework of their ordinary jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the Convention. It is also important to state that Nigeria should follow the procedure for the restitution of illegally exported cultural property provided for in Articles 3 to 6 of the 1995 UNIDROIT Convention.

9.0 Conclusion and Recommendations

The protection of cultural property from destruction during armed conflict, illegal trafficking and theft which has become prevalent globally requires both national and international participation. It is therefore imperative for nations and particularly Nigeria to implement provisions of the international conventions on the protection of cultural property that will foster the protection and restitution of cultural property. Nigeria having ratified and acceded to these conventions should domesticate them by enacting them into local laws under Section 12 of the 1999 Constitution. This can be done by enacting a comprehensive law on cultural property which would harmonise the provisions of the international conventions on the protection of cultural property. On the other hand, while awaiting the domestication of the conventions, the NCMM Act should be amended to introduce some salient provisions of the 1954 Hague Convention

⁵¹<<https://theantiquitiescoalition.org/problems-and-solutions/bilateral-agreements/>> accessed 18 July 2020.

⁵²People's Republic of China's National Report on the Implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 2011 – 2015 <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HO/CLT/pdf/Rapport_ChineWeb01.pdf> accessed 14 August 2020..

and its Second Protocol, 1970 UNESCO Convention and the 1995 UNIDROIT Convention which would go a long way to foster the protection and return of cultural property in Nigeria.

