BENIN OBJECTS: RETURN OF STOLEN OBJECTS OR RESTITUTION OF OBJECTS OF CULTURAL VALUE?*

Abstract
The ideological basis for protecting cultural property is geared towards sustaining the identity of a people. The expropriation of African cultural objects in colonial times coincided with the development of academic disciplines such as anthropology and archaeology whereby the material evidence of the newly discovered cultures was studied, catalogued and displayed in European museums to illustrate the greatness of the colonial empire. These expropriated objects are chiefly serving an academic purpose in Europe while they are wanted for the cultural life of the countries where they were taken from. This article, using Benin objects as a case study, proposes that a proper understanding of the nomenclature/terminology used in referring to the circumstances that led to the expropriation of these objects is important for determining the proper way of retrieving the objects from their present locations.

Keywords: *Benin Objects, Stolen Objects, Restitution, Cultural Value*

1. Introduction

The Vanguard newspaper on the 31st October 2017 reported the news captioned ‘We want Benin stolen artefacts returned.’ The Governor of Edo state, Mr Godwin Obaseki reiterated steps taken by his administration to work in conjunction with relevant stakeholders such as the National Commission for Museums and Monuments (NCMM) and the Benin Palace to secure the return of stolen artefacts which represent their history, political structure, social structure and culture. On October 26, 2018, the Vanguard newspaper reported another news captioned ‘Obaseki rallies EU museums, others for return of Benin stolen artefacts.’ The report had it that the Edo State Governor, Mr Godwin Obaseki was reported to have stepped up the campaign for the return of prized Benin Heritage objects looted from the Benin Kingdom during the British Invasion of the Kingdom in 1897. The use of the word ‘stolen’ in the news report seems inappropriate hence this research into determining the status or otherwise of the Benin objects carted away in 1897 as stolen objects at the time the Benin expedition occurred. Equally, the Benin Dialogue Group which has a central objective of establishing a museum in Benin City and working with a consortium of European museums to achieve a rotation of Benin works of Art to be displayed in the museum at Benin has met five times within and outside the country.[1] The first meeting, held at the Museum of Ethnology in Vienna, discussed the issue of sharing through loans and restitution. But, at the fifth meeting held in Leiden, the decision was taken that it ‘is not part of the business of the Benin Dialogue Group’ to concern itself with ‘the eventual return of works of art removed from the Royal Court of Benin’[2] on the justification that ‘questions of return are bilateral issues and are best addressed with individual museums within their national systems of governance.’[3] The above necessitates the undertaking of a voyage of discovery into the nomenclature for acknowledgement of past injustices in relation to Cultural Property to determine the right nomenclature to use for Benin objects carted away during the Benin expedition.[4]

2. Nomenclature for Acknowledgement of Past Injustices in Relation to Cultural Property

> Restitution strictly refers to the return of the specific actual belongings that were confiscated, seized, or stolen, such as land, art, ancestral remains, and the like. Reparations refer to some form of material recompense for that which cannot be returned, such as human life, a flourishing culture and economy, and identity. Apology refers not to the transfer of material items or resources at all but to an admission of wrongdoing, a recognition of its effects, and, in some cases, an acceptance of

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[1] F Shyllon, 2018. ‘Benin Dialogue Group: Benin Royal Museum – Three Steps Forward, Six Steps Back’. *Art Antiquity and Law* Vol. XXIII, Issue 4:341-346
[2] *Ibid* at 242
[3] *Ibid* at 243
[4] A brief account of the expedition is found in AA Adewumi, 2015. ‘Possessing Possession: Who owns Benin Artefacts? *Art’, Antiquity and Law* Vol XX, Issue 3: 229-242

> responsibility for those effects and an obligation to its victims. However, these are all different levels of acknowledgment that together create a mosaic of recognition by perpetrators for the need to amend past injustices.[5]

Arguments about 'restitution' of cultural materials first arose in the context of war plunder and in that context are very old.[6] The handing back of property to the original owners is variously referred to as restitution, recuperation, repatriation, retrieval, return and repatriation. These terms though often used interchangeably by writers have different legal connotations[7] in the sense that some issues are dealt with under public law while others are addressed under private law.[8] For instance, the Directive adopted by the European Union on the 'restitution' of cultural heritage illicitly exported from one member State to another does not relate to stolen property but the French version made use of the word 'restitution' while the English version made use of the word 'return'.[9] Repatriation is another word found in the *Draft UNODC Guidelines*: Guideline 54 uses the three terms return, restitution and repatriation.[10] Each of these words will be examined one after the other.

2.1. Repatriation and Reparation

Repatriation is a form of restitution to either the country of origin or to the ethnic group that owns it. This is a term often used for claims by indigenous peoples. Reparation seems to be wider in scope than restitution. 'Reparation' is appropriate in English only where one state is responsible for a breach of international law to another's detriment. Reparation order is either a compensation order or a restitution order.[11] It may take the form of: a. A compensation order which is made where an offender is made to make a compensation payment to the victim of the crime; b. A restitution order which requires that property is returned to the victim.[12] Restitution is the 'action of restoring or giving back something to its proper owners' generally used to refer to the return to an individual.[13]

Repatriation generally refers to the return of cultural objects to their country of origin. Repatriate has been defined as 'to return again to one's native country'.[14] Ulph and Smith [15]state that

> Repatriation' refers to the return of human remains or other property of cultural significance either to its country of origin or to a group of indigenous people. It does not suggest that the state has requested the return of the object. It is often used in situations where an object is returned at the request of a particular group, or where the object is simply purchased and taken back to its country of origin.

Ibidapo- Obe[16]states that Reparation is much wider than repatriation in that it is a claim for compensation for the obvious deleterious effects of the triple scourges of slave trade, colonialism and neo-colonialism. Repatriation is much more specific, relating to the return or restitution of African works of art, wrongfully appropriated in the process of colonialism. Renold[17] is of the opinion that repatriation should relate to cases which do not fall under

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[5] E Balkan. 2001. Making Amends: A New International Morality? Edited Extracts from *The Guilt of Nations: Restitution and Negotiating Historical Injustices.* Baltimore: Johns Hopkins University Press: xvi–xli, 309–49 in L V Prott, *Witnesses to History*. Paris: UNESCO Publishing: 79

[6] L V Prott & P J O'Keefe, 1989. *Law and the Cultural Heritage,* London and Edinburgh: Butterworths: 803

[7] I Stamatoudi 2001. *Cultural Property Law and Restitution.* Massachusetts: Edward Elgar Publishing Inc: 14

[8] *ibid:* 2

[9] See Directive 93/7/CEE du Conseil, du 15 mars 1993, relative a la restitution de biens culturels ayant quitte illicitement le territoire d'un Etat member, *Journal official no L 074.* The European Commission has submitted a proposal for the revision of this Directive. The text of the proposal is Retrieved 17 October, 2014 from http://eur-lex.europa.eu/LexUriServ.do?uri=COM:2013:0311:FIN:EU:PDF.

[10] Draft Guidelines on Crime Prevention and Criminal Justice Responses with respect to Trafficking in Cultural Property. The unedited version of 24th April 2012 is Retrieved 17 October, 2014 from http://www.unodc.org/documents/organised-crime/UNODC_CCPCJ_EG.1_2012/Draft _Guidelines_24_April_2012.pdf.

[11]Restitution & Reparation. Retrieved 17 October, 2014 from http://www.courts.dotag.wa.gov.au/R/restitution_reparation_print.aspx

[12] ibid

[13] The Oxford English Dictionary. 1993. Vol. VIII: 551

[14] Ibid. 460

[15]J Ulph & I Smith 2012. *The Illicit Trade in Art and Antiquities. International Recovery and Criminal and Civil Liability* Oxford and Portland, Oregon: Hart Publishing: 7

[16] A Ibidapo-Obe 2002. A Legal Agenda for the Repatriation of Plundered African Art in Essays in Honour of Professor D.A. Ijalaye. Ile-Ife, Obafemi Awolowo University Press. 139-166 at140

[17]M Renold 2013. International Tools: Return, Restitution and Beyond in Manacorda S &Visconti A (*a cura di*) *Beni Culturali e sistema penale*. Milano: V&P Vita E Pensiero: 127-137 at 128.

the UNESCO and UNIDROIT Conventions because of their non-retroactive nature. She is of the opinion that the cases decided through diplomatic negotiations between States and not necessarily purely legal constraints could well be classified as repatriation.[18]She recounted the example of the Shinagawa bell case[19]where Geneva repatriated to Shingawa in Japan, a gong that had been taken from a temple in Shingawa. The gong was meant to be melted and made into cannon in a place close to Aarau in German-speaking Switzerland. A very well- known Geneva collector and philanthropist, Gustave Revillod, bought the gong and placed it in his private collection thereby saving it from destruction. His entire collection was donated to the city of Geneva and a museum after his death. The gong was used to announce the opening and closing of the museum and placed outside the museum.[20] Early in the 1920's, Japanese tourists visited Geneva and recognized the gong from the Buddhist temple of Shinagawa. The Japanese and Swiss authorities were informed and negotiations started the Council of the City of Geneva debated on the matter and in 1958, it was decided to repatriate (the term restitution was used at that time) the gong to Shinagawa. In 1990, the City of Shinagawa, to thank Geneva, offered the city a perfect copy of the beautiful gong which now hangs in the park outside the museum. The *Association of Friends of Geneva and Shinagawa* was created which organizes cultural and educational exchanges between the two cities. This repatriation led to much more than the physical return of the cultural object.[21]

2.2. Return

'Return' may refer in a wider sense to restoration, reinstatement and even rejuvenation and reunification.[22] According to Greenfield,[23] Return is part of a wider movement of cultural treasures and need not only mean restitution in the sense of reparation for wrongful taking. The issue of return should be determined on the criteria of the means of acquisition and the nature of the object. Return is basically used for unlawful exports and the objects displaced by colonial powers from their place of origin. In reference to colonial powers, the movement will not be referred to as unlawful except when carried out in defiance of national and international laws in force at that time. As regards objects taken by colonial powers, return is to ensure that irreplaceable cultural heritage gets back to those who created them. Unlawful exports lead to return to state of origin. Greenfield[24] is of the opinion that the issue of return should be determined on the basis of two main criteria which are the means of acquisition and the nature of the object. This is because she believes it should be possible to legally lay claim to materials taken by force, by unequal treaty, by theft or deceit as the objects in this category are often held in the public sector by states' institutions. Title to property such as historic manuscripts or records of a nation including the narrative representation of its history in an art form which has been dismembered and objects torn from immovable property forming part of the sovereign territory of a state where they were taken from and paleontological materials should not be deemed to have passed. Ulph and Smith are of the opinion that 'return' is neutral and doesn't suggest contravention of any law. To them, a state seeking return of an object may simply be doing so on the basis of cultural co-operation, rather than because the object has been misappropriated in the past. It may even be as a result of an *ex gratia* act from the donor.[25]

The merits of return ought to be evaluated not only according to historic disapprobation but in accordance with the sense of cultural property 'going back' usually to its homeland, for aesthetic and historic reasons.[26] The case of *Union de l'Inde contre Credit Agricole Indosuez (Suisse) SA* came up before the Swiss Supreme Court.[27] The

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[18] *ibid.; see also* C Renold, A Chechi, M Renold, Case Saral Baartman- France and South Africa, Platform Ar Themis, Art-Law Centre, University of Geneva. Retrieved 17 October, 2014 from http://unige.ch/art-adr; W I Merrill, E J Ladd, T J Ferguson, 'The Return of the Ahayu:da to Zuni Pueblo', in Prott (Ed). 2009. *Witnesses to History: A Compedium of Documents and Writings on the Return of Cultural Objects*. Paris: UNESCO: 255-257

[19] See A L Bandle, R Contel, M A Renold, *Affaire Cloche de Shinagawa*- Ville de Geneve et Japon Platform Ar Themis, *loc.cit.*

[20] See the history of the *Ariana Museum* at the official website of the City of Geneva. Retrieved 17 October, 2014 from http://www.ville-ge.ch/ariana/index.php?content=1.2.1.4.2.&langue=eng; see also E Burkhard, M T Coullery, D Grange, Klopmann. (Eds).1996. Geneve-Shinagawa Shinagawa-Geneve, Association d'Amitie Geneve- Shinagawa, Geneve: 13-39.

[21] Renold *op.cit… :131*

[22] J Greenfield 1989. *The Return of Cultural Treasures*. Cambridge: Cambridge University Press: 256

[23] *Ibid:* xvii

[24] Greenfield J. *loc.cit.*

[25] J Ulph & I Smith 2012. *The Illicit Trade in Art and Antiquities. International Recovery and Criminal and Civil Liability.* Oxford and Portland, Oregon: Hart Publishing: 7

[26] Greenfield *op.cit*: 367

[27] Union de l'Inde contre Credit Agricole Indosuez (Suisse) SA, Supreme Court Decision, April 8, 2005: ATF 131 III 418. For a commentary on this case, see. Renold M.A. 2006. An Important Swiss Decision Relating to the International Transfer of Cultural Goods: The Swiss Supreme Court's Decision on the Giant Antique Mogul Gold Coins, *International Journal of Cultural Property.* 13 (3): 361-369; see also Contel., Chechi & Renold Affaire Pieces d'or geantes – Union de L'lnde contre Credit Agricole Indosuez SA, Platform ArThemis, l*oc.cit.*

subject matter was two giant ancient Mogul Gold coins (of more than 10 and 1.2 kilograms) which had belonged to the Nizam of Hyderabad in India before the unification of India. These two coins, after moving around with other property eventually ended up deposited in a Swiss bank where they had been used as a security for a loan made to the grandson of the Nizam who lived in Australia. The loan, which happens to be for over S20 millions, was never reimbursed and interest on it was not paid, so that the bank decided to sell the security. The Indian government's claim before the Swiss courts, among other things, that the coins had left India without any authorization and should therefore be returned to India (as it is often the case in such matters, the issue of ownership was also argued and India claimed that the coins were actually transferred to the central government when the principality of Hyderabad joined India upon independence, but this claim was rejected for lack of evidence of the transfer of ownership).[28] The courts had to decide whether to order the return to India of the gold coins or not. The order for return was refused by the Supreme Court in 2009, mainly because for it the return of cultural property must be based on an international Convention and also because a court cannot automatically apply foreign public law.[29] Since there was no international agreement between India and Switzerland and India's rules on the protection of cultural heritage are public law, Swiss courts will not apply them automatically.[30] The above shows the problem of foreign public law restraining the export of cultural goods.

2.3. Restitution

'Restitution' unlike 'Return' is much more controversial. Restitution is an old common law concept that has become transformed into the new common law science which in recent years has emerged in textbooks, law journals and law articles, lectures and conferences where none had existed before. The modern law of restitution resembles the civil law principles of quasi-contract found for centuries in Scottish civil law. This is fascinating to civilians in countries with codified laws. In civil law**,** unjust enrichment is one of the quasi-contracts (others being *negotiorum gestio*[31] and the reception of what is not due) which triggers restitution. The principle of unjust enrichment now unites claims for restitution at common law.[32] In common law, the law of restitution developed mainly through the action, *indebitatus assumpsit* under the implied contract theory[33] as the common law used to be restricted to specific forms of action which did not include a general restitution claim for unjust enrichment. The abolishment of the forms of action led to the abandonment of the concept of unjust enrichment which has however been recently replaced by a substantive principle of unjust enrichment which underlies, according to Goff & Jones,[34] not only quasi-contractual claims (as in the civil law) but also the other related causes of action which trigger a claim for restitution.

Restitution refers majorly to war pillage and stolen property or any unlawful situation. To Kowalski,[35] 'restitution' is seen in relation to takings in wartime and belligerent occupation. Barkan,[36] applies the word 'restitution' to include the entire spectrum of attempts to rectify historical injustices, including not only the return of the specific belongings that were confiscated, seized, or stolen, such as land, art, ancestral remains, and so on but also 'reparations' (some form of material recompense for that which cannot be returned, such as human life, a flourishing culture and economy, and identity), and 'apology' (an admission of wrongdoing, a recognition of its effects, and, in some cases, an acceptance of responsibility for those effects and an obligation to its victims). He sees the concept from the angle of 'making amends' as the result of a sentiment of guilt. To him, restitution is both a legal and also as a cultural concept. According to Ulph and Smith, 'restitution' has been used contextually in the international arena in reference to disputes between states. The UNESCO's IGC Guidelines for the use of the Standard Form Concerning Requests for Return or Restitution has it that 'restitution' should be used in cases of illicit appropriation'[37]thus depicting objects unlawfully taken in contravention of the laws in the source countries or

[28]See generally Renold. *op.cit:* 132

[29] See Renold *op.cit.*

[30] *ibid*

[31]See Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. Which defines *negotiorum gestio* under the civil law to means a doing of business or businesses. A species of spontaneous agency, or interference by one in the affairs of another in his absence, from benevolence or friendship, and without authority. 2 Kent, Comm. 010, note; Inst. 3, 28, 1 *available at* http://thelawdictionary.org/negotiorum-gestio/#ixzz2pLuJpZTK accessed on 3rd January, 2014.

[32] Lord Goff of Chieveley & G. Jones. 1993. *The Law of Restitution*. London: Sweet & Maxwell, 4th ed.: 12.

[33] *ibid*. at 5-12.

[34] *ibid*. at ll

[35] W A Kowalski, *Restitution: Art Treasures and War* in Prott, *Witnesses…* :163

[36] E. Barkan, ,'Making Amends: A New International Morality? The Guilt of Nations: Restitution and Negotiating Historical Injustices' in Prott *Witnesses…* :78

[37]Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, UNESCO 1986 (Revised 1996).

the Conventions. Museum directors, however, dislike the use of the word restitution because they claim all objects in their custody were lawfully obtained which is not realistic.

The holocaust represents an unlimited number of cases of restitution.[38] A famous restitution case took place between Austria and a US citizen, Mrs Maria Altmann in relation to six paintings by Gustav Klimt which belonged to her great aunt Adele Bloch Bauer in Vienna.[39] The case that led to the restoration of five out of the six paintings started from the US Supreme Court and ended before an international arbitration. Austria, after attempting to finance the repurchase of the paintings had to respect the arbitral tribunal's order. In the extraordinary case of *Iran v Barakat Galleries*[40] decided in 2007 by the Court of Appeals in England, the English court ordered, in the end, the restitution of several very old (at least 2000BC) chlorite artefacts from the area of Jiroft in Iran. These artefacts were the product of an illicit excavation. After being sent to various countries, where they were allegedly acquired in good faith, the artefacts ended up in the Barakat Gallery, a highly reputable gallery in London. Iran claimed the restitution of these ancient artefacts on the ground that, like many States, it owns the archaeological objects that are under its ground. At the end of the complex case involving very different issues, the restitution was ordered to Iran, contrary to precedents going the other way in the UK before this case.[41]

3. Return and Restitution in the 1970 UNESCO and 1995 UNIDROIT Conventions

Under the international conventions on cultural property, only the terms 'return' and 'restitution' are used. Return would be based mainly on Article 7b of the 1970 UNESCO Convention[42] and on chapter III of the 1995 UNIDROIT Convention[43] which provides for the return of objects exported contrary to the laws of the country of origin, provided certain interests are damaged.[44] Restitution is based on Article 7b of the UNESCO Convention and on Article 3 of the UNIDROIT Convention. The title of the 1995 UNIDROIT Convention deals precisely with these two topics and it has two separate chapters on the two issues: Chapter II deals with stolen cultural property and its restitution and Chapter III deals with illicitly exported cultural property and its return. Restitution relates to stolen cultural property and return to illicitly exported cultural property. This makes the terminology on the topics 'return and restitution' to be clear and unified.

4. Provisions for Restitution and Return in National Laws

In countries where the 1979 UNESCO and the 1995 UNIDROIT Conventions do not have force of law either because the countries concerned have not ratified the Conventions or because they have ratified but have not domesticated their provisions, the way issues on return and restitution will be handled will follow different considerations from those set down in the Conventions. In purely national settings, restitution under civil law, would be based on the principle of the restitution of stolen property, which is to the effect that subject to certain conditions, the good faith purchaser may be protected, even if he acquired stolen property.[45] Whereas in common law states restitution would be based on the *nemo dat quod non habet* rule (which can be summarized by 'once something is stolen, it remains stolen forever') which will enable restitution in almost all cases.[46] Also, the general rules of private international law are to the effect that states generally apply the law of the place where the object is located at the time of acquisition. This is the *lex rei sitae* principle based on the *lex originis,* the place of origin, instead of the place of situation. This leads to other complications outside the scope of this article.[47] In national laws, return could be based on the principle of taking into consideration of foreign laws that protect cultural

[38] See generally A L Bandle A Chechi, M A Renold *Case 200 Paintings- Goudstikker Heirs and the Netherlands, Platform Ar Themis* loc.cit; P Gabus, M A Renold (Eds.) 2004. 'Claims for the Restitution of Looted Art/ La revendication des oeuvres d'art spoliees', *Studies in Art Law*, vol. XV, Geneve- Zurich-Bale: Schulthess.

[39] Renold *op.cit*. :131

[40] *Government of the Islamic Republic of Iran v. The Barakat Galleries Ltd. [2007] EWCA Civ. 1374.* On this case, see Chechi, Contrel. & Renold, case Jiroft Collection-Iran v. The Barakat Gallaeries Ltd., Platform ArThemis *loc.cit*; D. Fincham, Iran v. Barakat: Iran Wins Barakat Appeal, in Prott, *Witnesses to History*… : 388-390

[41] Attorney General of New Zealand v. Ortiz [1982] 3 QB 432, rev'd, [1984] A.C. 1, add'd, [1983] 2 All E.R. 93.

[42] 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

[43] 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

[44] 1995 UNIDROIT Convention, Art. 5.3

[45] See art. 714.2 of the Swiss Civil Code of 10 December 1907 (RS 210) and art. 1153 and 1155 of the Italian Civil Code (Royal Decree No. 262 of 16 March 1942, published on Gazzetta Ufficiale No. 79 of 4 April 1942)

[46] M A Renold, 'Stolen Art: The Ubiquitous Question of Good Faith', in Prott, *Witnesses to History*... 309-313

[47] See M H Carl 2004. *Legal Issues Associated with Restitution- Conflict of Law Rules Concerning Ownership and Statutes of Limitation,* in Resolution of Cultural Property Disputes, the Permanent Court of Arbitration/ Peace Palace Papers, PCA International Law Series. The International Bureau of the Permanent Court of Arbitration. Ed. Kluwer Law International: 185-192

heritage from illicit export and that is generally quite difficult. Sometimes the foreign laws are taken into consideration, based on specific mechanisms of private international law, such as the specific conflict of law rule applicable to foreign imperative rules (see e.g. art 19 of the Swiss Private International Law Act[48]or the Rome Convention on the law applicable to contractual obligations).[49] Harmonisation of laws is another problematic area. In respect of archaeological objects, some States – Italy, Switzerland, Greece, Iran – have adopted the rule that whatever is in the subsoil, if it is of archaeological interest, belongs to the State. This is not a uniformly applied principle because the UK, the United States and France do not have rules similar to this. This brings to fore a strong need for harmonization of the laws in this field. Harmonisation in this regard will lead to the avoidance of protracted disputes such as the one in the Barakat case, because in the Barakat case the Iranian legislation and the possible ownership by the State were very difficult to interpret. There were complex archaeological issues bothering on laws and changes at different levels of the State, which made their interpretation by the UK judge very difficult. Harmonisation of legislation in this aspect will make it easier for other States to understand and apply the laws more easily than what obtains today. For countries that have ratified the UNIDROIT Convention, this would enable an appropriate interpretation of Art. 3.2 to the effect that archaeological objects, which are the product of illicit excavations, are to be considered as stolen objects.[50] The issue of foreign public law restraining the export of cultural good is also fundamental as national judges sometimes refuse to apply the law of a foreign state in a domestic court. In *Attorney- General of New Zealand v. Otiz,*[51] the court held that foreign public law rules do not enjoy extra-territorial application. Also, in the 2004 case of *Federal Republic of Nigeria v. Alain de Montbrison*,[52] the Paris Court of Appeal rejected a claim by Nigeria under Article 13 of the 1970 UNESCO Convention for the return of the Nok Statues illegally exported from its territory by a French antique dealer based on the argument of the non-extraterritorial application of foreign public law.[53]

5. Conclusion

The Benin Bronzes were carted away from Benin Kingdom as spoils of war at a time the Nigerian state was yet to be in existence and as such do not qualify as 'stolen' objects which should be returned to Nigeria[54]as reflected in the caption of the news referred to in the introduction. This is because at the time of their expropriation, there was no legislation vesting ownership of the antiquities in Nigerian territory or better still, Benin territory, thereby reducing the economic value of the property by making it impossible to be sold, ultimately making the looter to become a thief entitled to be punished while the property is capable of being recovered from subsequent purchasers.[55] It is sad to state that up till now, Nigeria has no legislation on state ownership of antiquities and undiscovered cultural property thereby making it impossible for decisions in cases like *United States v. Schultz*[56] and *Government of Islamic Republic of Iran v The Barakat Galleries Ltd*[57] to become foreseeable. Having journeyed thus far, it is trite to conclude that the decision reached at Leiden, though not favourable to Nigeria, is in tandem with international law principles. Nigeria needs to wake up and do the needful to bring her laws in line with her commitments under the international instruments.

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[48] Swiss Private International Law Act, Art. 19. 18 December 1987 (RS 291).

[49] Rome Convention on the law applicable to contractual obligations. Convention 80/934/EEC, 19 June 1980, *Official Journal* L266

[50] Art. 3.2 of the *UNIDROIT Convention* states that 'for the purposes of this Convention, 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.'

[51]*Attorney- General of New Zealand v. Otiz* (1984) AC 1

[52] *Federal Republic of Nigeria v. Alain de Montbrison,* Juris Data No. 2004-238340; and Court of Cassation, *l ere civ.,* 20.9.2006, No. 04-15.599, Juris Data No. 2006-034988.

[53] This was the case even though both countries have ratified the UNESCO Convention

[54] A A Adewumi. 2015. 'Possessing Possession: Who owns Benin Artefacts?' *Art, Antiquity and Law* Vol XX, Issue 3: 229-242

[55] P Gerstenblith, 2009. *Schultz and Barakat*: Universal Recognition of National Ownership of Antiquities. *Art, Antiquity and Law,* vol. XIV, Issue 1, p. 21; A A Adewumi, (2016). 'Curbing the Illicit Traffic in African Antiquities through Legislation. *Art', Antiquity and Law* Vol. XXI, Issue I: 43-56

[56] *United States v. Schultz* 178 F. Supp.2d. 445 (S. D. N. Y 2002) aff'd, 333 F.3d 393 (2d Cir. 2003)

[57] *Government of Islamic Republic of Iran v. The Barakat Galleries Ltd.* (2008) 1ALL E.R.1177