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# Archaeology and Heritage Legislation: A Comparative Study

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**Abstract**

One of the most important and pressing issues in Heritage Management in the World has been the effective protection and preservation of the Archaeological Heritage by the use of Heritage legislation. Over many years, copious legislations have been promulgated for the protection of cultural properties but these are not effective for protecting antiquity. In some countries thefts and illegal exportation of antiquities have been a reoccurring problem. What is the cause of this futility in heritage management? Is it a matter of the types of legislation promulgated from country to country? Why do some countries succeed in protecting their heritage while others seem to fail? This study will examine some aspects of the various laws and legislation, especially the very early ones that were enacted in seven countries namely Australia, Czechoslovakia, Denmark, New Zealand, Nigeria, Poland and Sweden. The essay will also focused on various ways in which Archaeology has been made popular through public education, as well as funding of archaeological projects in the seven countries mentioned above.

**Keywords:** Heritage Legislation, Cultural property, Illegal exportation, Education

**Definitions**

The word legislation in the essay will encompass all "laws, rules, regulations, acts, bills, statutes, enactment, charters, ordinances, measures, canons or codes", which affect protection and or management of archaeological and or cultural heritage of a country. Education will deal with all forms of "schooling, teaching, instruction, tuition, coaching, training, tutelage, drilling, disciplining, priming, informing, enlightenment, improving", even indoctrination of children and or adults in their cultural resources which belong to, or has been acquired by a country for its own use. (The Oxford Thesaurus. Oxford University Press: 237; 321 & 466).

**Legislation in various countries**

> "Cultural property is the product and witness of the different traditions and of the spiritual achievements of the past and is thus an essential element in the personality of the peoples of the world... it is indispensable to preserve as much as possible, according to its historical and artistic importance, so that the significance and message of cultural property become a part of the spirit of peoples who thereby may gain consciousness of their own dignity"(Preamble to the 1968 UNESCO Recommendation concerning the preservation of cultural property endangered by public or private works).

Why the use of legislation? Legislation is proper because there is need for the protection of the cultural heritage of countries all over the world. Cultural materials include artefacts, buildings, monuments, sites etc. There are also some aspects of the cultural heritage, which are non-material, for example: - festivals, rituals, skills, religious beliefs, folklore, traditions etc. Cultural objects therefore represent all that is important to living for mankind. Although interest in cultural heritage had always seemed to exist, the 21$^{st}$ century has witnessed a great increase in interest by the general public. Increasing value is being attached to cultural property and safety is becoming more hazardous. Since cultural heritage is fragile and some of the objects easily deteriorate or get mishandled, the need for legislative intervention is great. The increase in cost of cultural property has also made it a lucrative business for illegal trafficking. These and many other reasons make it necessary for legislators to step in to protect cultural heritage.

Legislation is often promulgated but not effectively used. In other cases laws are not able to perform certain functions and are limited in scope thereby creating loopholes. It is the aim of this work to look at certain laws and legislation which have already been promulgated and where possible examine how these laws have been effectively used in the various countries studied.

**Australia**

The Australian government was rather slow in passing laws to protect aboriginal relics. This must have been a side effect of Australia's early colonial history (O'Keefe & Prott 1984:69). Legislation to protect aboriginal relics and early colonial remains was slow to arrive and when they did, the Northern part of the country was protected first. From the period between the late 1960's, many laws and legislative measures were introduced to protect relics of the past. These relics are made up of archaeological artefacts and sites that are archaeologically visible. Most of the laws which were made during this period were geared towards protection or neglect of archaeological sites which are sacred or important to Aboriginal religious beliefs or traditions but which do not show evidence of Aboriginal occupation. In addition the legislation provided for control of archaeological research and protection of all sites and artefacts that are Aboriginal in nature. All artefacts collected after the promulgation of this law became the property of the crown. In this legislation, overall statutory protection meant that all sites that have material traces of Aboriginal culture cannot be destroyed or damaged and artefacts cannot be collected except by written permission of the State Government.

The earliest legislation in Australia for the protection of their cultural heritage is the Native and Historical Objects and Areas Preservation Act of 1955-60. This Act protects Aboriginal and historic archaeological sites and artefacts in the Northern Territory and was particularly necessary because there was need for legislation to deal with relics and not just sacred sites. The Act was made possible to determine which sites were sacred to the Aborigines and which were purely archaeological sites. Sometimes clashes exist because there were rock-painting sites that contain occupation deposits that were of some importance to the tradition of the Aborigines.

In 1972, the Western Australian Aboriginal Heritage legislation was promulgated. Section 5b made special provisions for Aboriginal custodians, protection of sacred sites and traditional use of sites and artefacts, "including any sacred ritual or ceremonial site, which is of importance or of any special significance to persons of Aboriginal descent" (Western Australia Aboriginal Heritage Act 1972: Section 5b).

The Aboriginal Sacred sites Act of the Northern Territory followed this in 1978. The major provisions of this act can be found in Section 13. They are: -

(I) To establish and maintain a register of sacred sites

(ii) To examine and evaluate all claims for sacred sites which are made

by Aborigines and finally,

(iii) To record sacred sites with details of their significance to Aborigines

as well as custodianship of the site.

Aborigines own Australian heritage and permission must be sought and obtained from Aboriginal landowners prior to any excavation or research on Aboriginal lands. Aborigines have a strong attachment to religion and this makes sites that have religious value, very symbolic to them. The discovery of a site is immediately linked to the life of their ancestors and declared "a sacred place". The Federal Aboriginal and Torres Strait Islanders Heritage Protection Act of 1986 had been promulgated to "protect places and artefacts of particular significance to Aborigines and Torres Strait Islanders in accordance with their traditions"(Prott & O'Keefe 1984). Practically though, this law was meant to help the government deal with situations where sites belonging to Aborigines are under threat but were not properly protected by law. The Act protects sites that are unknown to Aborigines before discovery. Penalties for contravening this Act was heavy running up to amounts ranging from $A10, 000 to $A50, 000 or five years imprisonment.

Fig. 1 Kakudu National Park, Australia (Source: Australian Government: Department of the Environment

The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is the Australian Government's environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. The EPBC Act provides automatic protection for World Heritage properties and executes considerable civil and criminal penalties on a person who takes an action that has a significant impact on the world heritage values of a declared World Heritage property. Aborigines are very worried about custodianship of their past. They believe that they did not migrate from anywhere but had always lived in Australia. Archaeologists in Australia are always working in close consultation with Aborigines. It is more of a co-operative venture and this helps the Aborigines to prove their prior ownership of Australia. Flood (1989:85) reports that there are no specific legislative provisions for consultation between Aborigines and Archaeologists but the Northern Territory Sacred Sites Act has some general provisions that cover this issue. An example of this is an archaeological project, which was successfully carried out by some archaeologists in the Kakudu National Park in Australia in 1985 (See Fig. 1). The excavations were successful because the group of archaeologists worked in very close consultation with the Aborigines. Kakudu contains the richest treasury of Australia's rock arts and uranium deposits. The land had been granted to the Aborigines by the Aboriginal Land Rights (Northern Territory) Act of 1976 but was leased back to the Australian National Parks and Wildlife Service in 1978. The magnanimity of this lease shows the success of consultation between archaeologists and aborigines.

**Czechoslovakia**

Czechoslovakia was originally part of the Austro-Hungarian Empire in the Renaissance. This form of colonialism was strongly resisted by the Czechs and when eventually the nations of Czech and Slovak were formed, it gave rise to a more meaningful study of Archaeology, Historical Sciences and Museum Studies. With the realisation of the existence of monuments and discovery of archaeological artefacts, the need for protection became more crucial. There had been some laws and legislation that had been enforced before this time for the protection of the castles, land and wealth of the various monarchs and the bourgeoisie.

The earliest evidence of legal protection of historical monuments was in 1672-73 when the medieval castle of Bohuslav Balbin was to be destroyed. Another protest against the destruction of historical monuments came from Jan Tomas Berghauer in 1761. This form of aristocratic protests and legal protection was popular in Czechoslovakia and continued for a long time. By 1776 and 1782 royal orders, written in legal language had been passed to protect objects made of precious metal and coin hoards.

In 1850, the Emperor promulgated a decree that established the Imperial Royal Central Commission to handle finds from excavations, notification of accidental discoveries and protect and preserve ancient roads. In urgent cases, a conservator under this decree had the ability to halt any activity threatening a monument in any way. In 1873, the jurisdiction of the Central Commission extended to works of art, archival and prehistoric material. The name was changed and specialists were appointed for the work of conservation. By 1918 (which was the end of serfdom in Austria) vast number of archaeological discoveries had been made and there was a real problem of registering, documenting and protecting sites as a result of increased number of constructions and agricultural practices. Archaeological collections continued to grow with new finds made regularly. The museums handled these and became a pillar of national revival as well as a centre for modern research (Princ: 1984).

Until some years ago, the Federal system of Czechoslovakia had two laws being enforced simultaneously. These ran parallel to each other except for some provisions, which were minor in nature. One set of laws was for the Czechs and the other for the Slovak region. In Slovak, the first legal protection for monuments was the

Hungarian Statute No. XXXIX of 1881. In this legal document that established the State Council for Monuments, artistic and archaeological monuments were placed under the Ministry of Religion and Education. The law was so effective that if a landowner or holder does not permit excavation, his land could be taken away from him. It was also provided in the law that a landowner of an artistic or archaeological monument must keep the land in the state in which the conservation units left them.

In Austria, the 1911 statute of the Central Commission legally covered the protection of monuments but only indirectly. The statute established a council and a state office for monuments as well as a conservator for territories in Austria. Finally in 1918, a law was passed in Bohemia. After Czechoslovakia became independent as a republic, Decree No. 13 of October 1918 placed all historic and artistic monuments under the Czechoslovakian National Committee with various statutes: -

(i) Statute No. 64/1918 prohibited export of antiquities

(ii) Statute No. 21/1929 protected prehistoric monuments and caves

(iii) Statute No. 155/1919 established the State Commissariat for Protection of Monuments. Decree No. 29 of 1939 replaced this and the Ministry of Education and National Culture took its place in Bratislava (Princ 1984).

These decrees and legislation never completely protected cultural monuments. It was in 1941 that Decree No. 274 defined the concept of monuments and established principles for their protection. The law of 17th April 1958 on Cultural Monuments (Art. 17(2)) provides that “the executive organ of the national district committee will grant to the finder of any archaeological monument or other valuable substance a reward of up to the value of the usual price of the material of which the monument is made” and that was quite an incentive (Prott & O’Keefe 1989). Among other legislation, Czech Republic signed the La Valetta Convention in 1998. The La Valetta Convention is an integral part of the Czech legislation in the form of international agreement although it is not directly associated to the heritage legislation.

**Denmark**

Archaeology has evolved and maintained a long-standing strong tradition of public support and respect to a degree that may not have been surpassed in any other country. (Kristiansen 1984:33). As at 1984, one out of every hundred Danes subscribed to **Skalk** that is a very well known archaeological magazine in Denmark. In legislation about heritage protection and preservation, one of the countries that made laws for the protection of archaeological heritage and effectively implemented these laws is Denmark. Systematic protection of archaeological materials began in Denmark in 1807 when there were recommendations for the need to preserve monuments and create awareness among the peasants to value monuments and in 1873 a fifty year long project began. Its main purpose was to record all visible monuments (Parker-Pearson 1997; Preserving and Presenting the Evidence, on the Internet). Before 1937, protection of monuments was done on a voluntary basis. The Nature Protection Act of 1937 protects all ancient monuments (whether registered or not). There was no requirement of compensation for landowners. The 1937 Act in Denmark was very effective. As soon as it became law, all visible monuments were protected fully without prior registration. The National Museum had a free hand in deciding which monuments should be protected and which ones should be left out. The interesting thing about this Act is that for twenty years, the National Museum chose the monuments to be protected but the Conservation Board immediately protected all the monuments exempted from protection. (Kristiansen 1988:22). As the years went by, the 1937 Act was modified and several provisions were made to ensure complete protection for monuments. Five legislative changes and additions were made to the Act: -

- By 1961, all ancient monuments automatically acquired 100m free zone around it. This made it possible for the land around a monument to become part of it.

-Historical shipwrecks were protected in 1963 and by 1983, all historical shipwrecks were brought under the Nature Conservation Act and by this new provision, all shipwrecks were protected for a zone of 24 nautical miles within or without Danish territorial waters.

- In 1969 the same Act provided that all ancient monuments that were not listed must be investigated before they are destroyed. Section 49 made this obligatory, before construction work can proceed.

- In 1992, the Nature Conservation Act was renamed the Protection of Nature Act and monuments from historical times, for example, earth and stone walls were also protected by law.

Denmark has many registered prehistoric monuments and sites that are protected by law (Kristiansen 1988:27). Protection of all archaeological sites in Denmark is thus ensured by law and has as a result become integrated in the long-range planning for the country as a whole. Since these monuments are each surrounded by a 100m zone, before any activity is carried out on the land, permission must be obtained. About 100 monuments are registered every year, but then licences are given regularly to Danish landowners to plant and build on these 100m free zones (Prott & O'Keefe 1984: 327). This is not surprising when one takes into account the fact that over 100,000 monuments are officially recorded in Denmark. Monuments are hardly ever damaged or removed, because they are regularly inspected and the public already have a long-standing tradition to protect monuments and other materials and finds that are of any archaeological importance to them. The best-known finds are the bog corpses from *Tollund* (Fig. 2), *Elling, Grauballe* and *Borremose*. Newer radiocarbon dates show that the bog corpses date predominantly from the period from *c.* 750 BC to 100 AD, the closing phase of the Bronze Age and the Pre-Roman Iron Age (Jensen 1982: 280).

Fig 2. The Tollund Man, a bog corpse found near Silkeborg, central Jutland. The corpse has been radiocarbon-dated to 220 AD. i.e. the Roman Iron Age. Photo: Courtesy of The National Museum, Copenhagen.

The Archaeological Board of Denmark (DAN) published some very important archaeological journals. One of the most important of these is the journal ***Arkæologiske Udgravninger i Danmark*** (Archaeological Excavations in Denmark), which summarised all the archaeological work in Denmark in the year. Archaeology in Denmark has always been nationally accepted over the years. It is a symbol of their past, and presents for the Danes, the roots or beginnings of their history as a nation. The history of archaeology in Denmark cannot be complete without mentioning Christian Jürgensen Thomsen (1788-1865) the son of a wealthy merchant who put archaeology in the public eye (Klindt Jensen 1975:49-67), and J.J.A. Worsaae (1821-1885) who followed Thomsen's footsteps and sealed the tradition of Danish prehistory and public information and this has endured. Teaching archaeology in Danish schools could be linked to Jürgensen Thomsen. As a result of rich collections in the Museum of Northern Antiquities in the 1830's, he "developed the form of an empirical science which became the tutelary system around which large sections of European archaeology grew up" (Jensen 1993:8). An analysis carried out in 1980 shows that at least 34% of publications on Danish archaeology were on popular archaeology.

**New Zealand**

Most of New Zealand's efforts to protect and preserve its archaeological monuments have been linked with the control of export. This was evident in the Maori Antiquities Act of 1901. (McKinlay 1973). Just like Australia, New Zealand was quite late in protecting their cultural heritage but for the last 25 years, New Zealand has done a lot in protecting its cultural heritage both legislatively and administratively.

The Antiquities Act of 1975 focuses on protection of relics. The Antiquities Act also defines an antiquity as: -

> "Any ship, boat or aircraft, or any part of any ship, boat or aircraft or any equipment, cargo, or articles belonging to any ship, boat or aircraft in any case where that ship, boat or aircraft has been or appears to have been a wreck in New Zealand..."(Prott and O'Keefe 1984).

The immediate problem with this Act is that the ship or boat should have been a wreck. What if the ship is not damaged but needs to be protected? On the other hand, a ship could be slightly damaged, would it be called a wreck? What exactly is the extent of damage that would qualify as a wreck? In the Austrian Historic Ships Act 1976 (s3 (1)), shipwreck has been defined as the "remains of a ship" and this makes the Act clearer. The Minister for Home Affairs has the right to declare an area "a protected zone" for about 100 hectares, provided a historic shipwreck or relic lies within it. Section 7 also provides that the airspace above the area is a protected zone and even the waters and the sea-bed beneath the area as well as the subsoil of the sea-bed. In addition, the protected zone may consist of "sea or partly of sea and partly of land". The Protection of Historic Wrecks, Act No. 203 of 31 May 1963 also provides that there shall be no alteration of the state of the bottom on or around the place where the objects are to be found.

The Reserves Act of 1977, protects and preserves objects and places which are of special interest to people while The National Parks Act 1980, requires parks to be preserved in such a way that the interest in sites both historical and archaeological will be maintained and The Historic Places Act 1980 deals with the preservation of sites. . It is an offence punishable by the law in New Zealand for anyone to destroy, damage or in any way modify an archaeological site. This is covered by the Historic Places Act of 1980 (Sec. 44).

In some legislation, provision is made for the state or crown to have certain relics reserved. In New Zealand, the Antiquities Act of 1975 provides that every artefact "found anywhere in New Zealand or within the territorial waters of New Zealand after the commencement of this Act is hereby declared as deemed to be *prima facie* the property of the crown (sec. 11). In addition, all materials referred to as artefacts under the New Zealand legislation is normally restricted to objects of Maori or others of non-European origin made in or brought to New Zealand prior to 1902 (O'Keefe & Prott 1982). Sometimes some members of the public who feel they can lay a greater claim to the state or crown have contested claims made by monarchs and have received a hearing. At times though, their interests are not recognised for obvious reasons. The Antiquities Act of 1975 also imposes absolute prohibition on trade in cultural heritage items of the state. Section 15, provides that no second-hand dealer (who holds a licence under the Second-hand dealers Act 1963) has the permission to trade in antiquities except if the Secretary for Internal Affairs has approved such a trade.

**Nigeria**

Nigeria as well as many other African countries was quite late in promulgating laws for the protection of their archaeological heritage. This must have been due to the fact that they were colonised by the British government until the year 1960 when they gained their independence from the colonial rulers. In 1897, the British expedition to Benin, Nigeria claimed so much of Nigeria's works of art as the British carted away to Europe all the works of art they could lay their hands on and burnt the rest with the city. Colonial administrators and their team of workers collected several works of art and carted these off to Europe where most of them are still today. Others were burnt in burn fires after they had been declared "fetish" by missionaries (Nzewunwa 1989:34).

By 1953, The Antiquities Ordinance known as Ordinance No. 17 brought into being the National Department of Antiquities. The Ordinance also provided for the establishment of museums, archaeological excavations, protection of monuments and handling of antiques. In 1957, The Antiquities (Export Permits) Regulations was promulgated but most of the laws promulgated at this time had a colonial background and apart from establishing museums, these laws were largely ineffective and subject to abuse.

Fig. 3 Queen Idia Mask on display at the British museum in London. (Source: Nigerian Commission for Museums and Monument's archives)

In 1977, the people of Nigeria celebrated the Festival of Arts and Culture (FESTAC) with the mask of Queen Idia (Fig. 2) of Benin in Nigeria as the festival mascot. Earlier on in the year 1897, a British punitive expedition under the command of the British Admiral Harry Rawson had invaded Benin City to avenge the murder of a British consul. The British army burnt Benin City and carted away their heritage. The booty from the attack on Benin included carved ivory, including the mask of Queen Idia, coral jewelry and hundreds of bronze statues and plaques. Many of these objects were auctioned off around Europe to cover the costs of the expedition. In response to this growth in cultural awareness, Nigeria has increasingly lost much of its cultural heritage through official and unofficial transfers of cultural and archaeological materials outside the country.

The Antiquities (Prohibited Transfers Decree No. 9 of 1974 had been passed by the military government of Nigeria and was concerned with locating or moving of antiquities. This decree made it impossible for any agent, unless he was accredited, to sell antiquities in the country. To try and make this decree effective, very harsh penalties were placed on defaulters and the police were authorised to search or seize antiquities found in the possession of such people without a warrant. After the Festival of Arts and Culture in 1977, it became clear that a review of legislation protecting the cultural heritage of the country was imperative. In response to this problem, Decree No. 77 of 1979 was promulgated. The explanatory note reads: -

> "The Decree provides for the dissolution of both the Antiquities Commission and the Federal Department of Antiquities and their merger to form the National Commission for Museums and Monuments. While repealing various enactments relating to Antiquities, the Decree consolidates most of the provisions thereof and makes fresh provisions in connection with the declaration of National monuments. The penalties for the destruction or unauthorised alteration or removal of monuments have been considerably stiffened up" (An Extra-ordinary Gazette of September, 1979, Lagos Nigeria p. A522).

Decree 77 of 1979 made it impossible for any other person except the Director General or any other person commission by him to buy antiquities in Nigeria. The decree also created an Executive Administrative Secretary who will be responsible for Research and training as well as Natural History and Technology. In addition Sec. 25 (4) provides that any antiquity, which was lawfully imported into the country, does not require an export permit to be taken out of the country. The export control system however requires that the person or persons involved must be able to produce on request, evidence of lawful importation. Section 21, sub-section 2 stipulates "a fine of two thousand naira (Nigerian currency) or five times the value of the value of the antiquity, whichever is greater, or imprisonment for three years" (Egunjobi 1988:9).

Fig 4 Sukur Cultural Landscape, Adamawa State in Nigeria (Source: UNESCO World Heritage Convention Documents)

Over the years, the international community also stepped into many nations and made legislations, in collaboration with the local people, to protect hundreds of cultural heritage sites as world heritage sites. Nigeria also benefitted immensely from this move and some of the more important sites were protected by world heritage laws (see section on International legislation below). The Sukur Cultural Landscape became a National Monument as determined by the Federal Decree No. 77 of 1979 (now NCMM ACT, Cap 242 of 2000) and the succeeding Adamawa State Government Gazette No. 47 Vol. 7 of 20 November 1997. In 2010, the Minister of Culture, Tourism and National Orientation inaugurated a Management Committee, which works closely with the Madagali Local and the Adamawa State Government to protect and preserve the site together with UNESCO.

**Poland**

Just like Nigeria, Polish legislation on the protection of cultural property was greatly delayed because of colonialism. Poland had been divided between Russia, Prussia and Austria. After her independence, Poland passed several laws and legislation protecting its cultural and archaeological heritage. The law on the Protection of Cultural Property and Museums of 15th February 1962 provides for need of approval before excavations (Art. 21), Notification of finds, financing excavations (Art. 22), archaeological excavations and finds are the property of the state. The Minister of Culture and Arts was also made the executing organ of the 1962 Act as well as others that followed. The Minister of Culture and Arts promulgated the Ordinance on Rewards and Archaeological Works on 12th April 1963. The Ordinance on Authorisation for Repair and Conservation of Monuments and Archaeological excavations was also promulgated by the Minister of Culture and Arts (10th July, 1963). Regulation No. 10 of the Minister of Culture and the Arts of 31st March 1976 makes it obligatory for people to advise the keepers of monuments whenever they want to sell or dispose of any monument.

Poland has made several legislative efforts in the past to recover cultural property that were illegally removed from Poland by their colonial masters. An example is the Treaty of Riga during which Russia and the Ukraine were to return to Poland, "all war trophies, libraries and archives, works of art and collection of whatever nature... which were carried off, irrespective of the conditions under which they were carried off and irrespective of the authorities responsible for such removal" (Prott & O'Keefe 1984). In a way, Nigeria needs this kind of treaty with Britain. Such a treaty would go a long way in restoring works of Art that were removed from the country.

**Sweden**

Legal protection of ancient monuments came into force in 1667 in Sweden. Denmark waited for another 300 years before effective legal protection for their cultural heritage was enforced (Kristiansen 1989). Earlier in 1630, a State Antiquary was appointed in Sweden and in 1666; the destruction of Ancient monuments and relics was prohibited. The legal protection that was enforced in 1667 was in recognition of this prohibition. The Swedish decree of 5 July 1684 protected all archaeological material "found piecemeal in the ground, ancient coins of all varieties, and finds of gold, silver, and copper, metal vessels, and other rarities, many of which are at present being discovered and secretly hoarded" (Klindt-Jensen 1975:27). All such finds were to be sent to the king and the Ancient Monuments and Finds Act of 2 April 1918, provided a reward for the salvaging of any object of archaeological and cultural importance. This was to encourage all those trying to hoard objects to give them up to the state. Sweden is a member of the European Convention on the Protection of the Archaeological Heritage 1969, Article 3 of which requires state parties to prohibit and restrain illicit excavations.

Act No. 350 of 12 June 1942, protected all Ancient Monuments and Finds including shipwrecks. The primary aim of this Act is to preserve all monuments in Sweden as well as cover among other things, the natural environs of the monument. The problem with this legislation is that the word "shipwreck" was not clearly defined and could mean other things. The same problem occurs in New Zealand. Prott and O'Keefe (1984) show that wherever words like "ship, wreck, boat or shipwreck" are used, they have to be referred directly to the general law of the jurisdiction concerned otherwise they are liable to the wrong interpretation during their application. As mentioned earlier, in the Australia Historic Shipwrecks Act 1976, "shipwreck" was expressly defined as "the remains of a ship". However there is provision in this Act for state ownership of the shipwreck if no owner is found. This preserves the ownership rights of individuals. In Sweden, about 700,000 known ancient monuments are protected by law and are not exposed to destruction through development (Lamm 1988:70).

**International Legislation**

The World Heritage Convention, which is actually the Convention for the Protection of the World Cultural and Natural Heritage 1972, is part of the three conventions that UNESCO produced to help protect and preserve archaeological heritage all over the world. The other two are The Convention for the Protection of Cultural Property in the event of Armed Conflict 1954, and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970. Major sites in the world are all included in the World Heritage Convention. In 1970, UNESCO instructed all countries to participate or have equivalent legislation in their countries. Australia was one of the countries that complied immediately. Consequently many countries became part of the convention.

At that time, one of the recommendations of the ICOM ad-hoc committee was that " those countries which have undergone the most heavy losses should be determined so that the international committee will deal first with them (ICOM 1977:3). A survey of all African cultural objects outside Africa was launched by ICOM (UNESCO Doc. CC 81/CONF. 203/10, 8; CC-87/CONF. 207/ 3, 4). Nigeria was one of the countries studied in 1983. Other countries made repatriation to countries they had wronged. In 1974, the Prime Minister of Sweden visited Poland and handed over the "Cracow parchment" as a gift (Swedish National Commission for UNESCO 1976: 9). In addition it was recorded that Sweden received enquiries from UNESCO about Nigerian cultural objects in her possession (Swedish National Commission for UNESCO 1976: 10).

In November 1970, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) adopted a convention to assist both developed countries and the emerging independent states, on the protection of their cultural heritage. Members of the General Conference of UNESCO at that time were only sixteen in number including Nigeria and they signed the 1970 convention. All the countries that signed the convention promised that they would: -

> "Establish and update a national inventory of the cultural property that ought to be protected; promote the preservation of their countries' artefacts through the establishment of cultural and scientific and technical facilities required; supervise archaeological activity to ensure "In-Situ" preservation of newly discovered cultural property or for future study, whole archaeological areas; set and enforce uniform ethics, rules for all concerned with the preservation and display of the country's cultural property". (Fasuyi 1973).

The problem with some of these conventions that were signed on international basis, were that some of them took so long before they could be implemented in the countries that are supposed to carry them out. For instance in Nigeria, this particular convention was not implemented until 1988 when President Ibrahim Babangida, the Nigerian president at the time, launched it. At that time there was need for a national cultural policy in Nigeria. Furthermore, some of the provisions of these conventions are not implemented as expected. In the case of Queen Idia mask of Benin, which lies in the British museum, all the United Nations and UNESCO resolutions as well as international conference conclusions and ICOM Code of Ethics, have not convinced the British museum and other westerners, continue to return the mask to the Nigerian museum. They consider the resolutions of the international bodies as irrelevant even though the resolutions represent the views of the majority of humankind.

It is pertinent to note that in 1996 the General Assembly in Sofia also ratified the ICOMOS Charter on the Protection and Management of Underwater Cultural Heritage. This Charter was projected to support the protection and management of underwater cultural heritage in inland and inshore waters, in shallow seas and in the deep oceans. This was a breakthrough for countries facing issues with management of antiquities that were located under water.

**A Brief Comparison**

While studying the legislation in some countries certain issues become apparent. One of these issues is that countries which had been colonised by other countries in the past suffered as a result of that. Nigeria and Australia are extreme examples of this. They were late in promulgating laws to protect their archaeological heritage and when they finally did, (in the 20th century), the laws were faced with all kinds of problems. Countries like Sweden and Denmark began the protection of their archaeological heritage as early as the 17th and 18th centuries respectively. In these two countries, Archaeology has grown to the point where heritage legislation has become nationally recognised. In Denmark, legislation was promulgated but it is on record that the Danes effectively protected archaeological materials voluntarily even before the laws were made and enforced. Even some of the problems, which Denmark has encountered while protecting their heritage, seem so minimal when compared with a country like Nigeria. Czechoslovakia and Poland were also affected by colonialism but have since made up for it by their progress in establishing cultural awareness among the public in their countries.

Some countries make legislation and promulgate laws for preserving and protecting their past but do not effectively implement these laws some of the time. Nigeria is an example of this. Despite Decree No 77, quoted above with its stringent provisions for any defaulter, thefts and illegal exportation of antiquities have been a reoccurring problem in Nigeria. This may be as a result of the fact that archaeologists generally do not work closely or even at all with the public in Nigeria. In Australia for instance, Aborigines are very concerned about the custodianship of their past. They want to have a say in all that goes on archaeologically especially where it will affect sacred sites. As a result of this, archaeologists in Australia are always working in close consultation with Aborigines. It is more of a co-operative venture and this helps the Aborigines to prove their prior ownership of Australia. The issue here however is the fact that the people understand the need for the protection of Sacred Sites and would do anything so as not to jeopardise their cultural heritage.

In Sweden the situation is regarded as comparatively favourable towards archaeology. (Lamm 1988:69). But a big loophole in the law-protecting heritage in Sweden is that although a developer must pay for the excavation of land on which a monument is standing, the law merely binds the developer, to pay for excavation of only the area that is threatened by the development. This creates the problem of having gaps in between sites and is not favourable for purposes of interpretation. In Nigeria there are no laws, which mandates a developer to pay for excavation. In many cases developers that are ignorant of archaeological materials do not even inform archaeologists of discoveries which they have made since they do not even realise that anything of importance has been discovered. An example of this situation in Nigeria is the site at Owerre-Elu in the Nsukka area of South Eastern Nigeria (Eze-Uzomaka 1996:75) where a timber market was built over one of the important Iron Age sites in Nigeria. Charcoal samples which were recovered at this site were dated by the accelerator method to 1060 60 B.P and 570 60 B.P. giving dates of about 800 to 1430 cal. A.D. (Okafor 1992:57; Okafor and Phillips, 1992: 688). Such a site has been destroyed.

Kristiansen (1984:32) observes that the Danish legislation look ideal for their country but in actual fact, applying the laws practically, have presented their own problems in the past. One of the cases cited as an example was a case between the museum and the conservation authorities. At a time it appeared to the museums that their traditional role in rescue archaeology may be reduced by the central authorities a result of the 1969 amendments

to the Nature Conservation Act. Section 49 of this Act had delegated some powers to the keeper of National Antiquities and the Agency for the Protection of Nature, Monuments and Sites, to build up a central excavation unit and this threatened the museums. The problem was solved when the plans for the central excavation unit could not be implemented by the Agency. Now a museum structure has been set up which can carry out an extensive number of archaeological investigations while the central conservation authorities deal with those areas that do not have archaeologists working on them.

**Conclusion**

There is increasing realisation of the importance of educating the public on the importance of their archaeological heritage. Despite this realisation a few of the countries studied do not yet have a practical approach to solving this problem. No preservation programme can be possible in any country without paying special attention to public education. Education is important while trying to enforce legislation in management of archaeological heritage. Even the governments of various countries also need to be educated while making policies for archaeology. “Programmes which do not sufficiently provide for education may well find, after some decades, that the best efforts in legislation and administration have served little purpose against a generation’s accumulated bulk of public apathy” (Prott & O’Keefe 1984:327).

In Nigeria, legal protection of monuments and sites come under the Federal Jurisdiction when it concerns the national property but cultural property protection could be more assured if the State and Local Government are incorporated under state properties protection. There is need for complementary laws for the states and local government (Edet 1990:93). Nigeria cannot move forward in Archaeology without the integration of cultural and archaeological studies in the curriculum and an encouragement of innovation in teaching methods.

In Denmark and Poland, Archaeology is taught in the primary schools and this has made it possible for people to be aware of their cultural heritage when they are still at a very impressionable age. In addition, apart from the generalisation of classes in archaeology, there is also the need for the education of teachers. The role of education cannot be overemphasised. Archaeology must find its way into the school curriculum. The people of Nigeria also need a change in the way that cultural objects are regarded in the country. The value of archaeological materials has to be raised so that the people will value them and help protect and preserve them for future generations.

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