

# Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

## CHINA

### I. Information on the implementation of the UNESCO Convention of 1970

#### 1. Ratification of the Convention

The Convention was ratified on September 25, 1989.

#### 2. Implementation in the national legal system and in the organization of services

(a) References of the principal national regulations adopted in order to implement the 1970 Convention.

The Law of the People's Republic of China on the Protection of Cultural Relics (hereinafter cited as "the Law"), newly amended in 2002, provides comprehensive provisions to specify cultural objects forbidden to leave the country, competent authorities that oversee permission to leave, licensing procedures, and relevant legal liabilities. The Regulations for the Implementation of the aforementioned law was promulgated by the State Council in 2003. The Regulations further specify a system for the entry and exit of cultural objects, including detailed provisions on qualifications of review authorities and their staff, review procedures, items to be reviewed, issuing of exit licenses, use of exit signage and legal consequences of exit permission. In order to improve the administration of entry and exit of cultural objects, the Review Standards on the Exit of Cultural Objects and the Administrative Rules on the Review of the Entry and Exit of Cultural Objects were enacted in 2007.

(b) Definition of "cultural property" used by the national laws

In Article 2 of the Law, the definition of "cultural relics" is broader in scope than the definition in the 1970 Convention of "cultural property", including not only moveable objects but also sites and monuments. The full text of the Law can be found [here](#).

(d) Administrative coordination

Cultural heritage authorities collaborate closely with public security departments and customs in a joint effort to combat illegal trafficking of cultural goods.

The State Administration of Cultural Heritage in China (SACH) has set up 16 agencies. These agencies review applications for entry and exit and issue certificates of approval to those meeting the set criteria. Customs authorities handle entry and exit procedures in accordance with certificate documents issued by review agencies. Once cultural objects obtained through illegal processes are identified in the review process, the review agency shall immediately report it to public security and the customs authorities. In handling cases concerning theft, looting, smuggling, or illegal operations, public security and customs authorities shall inform cultural heritage authorities of the development. The latter shall also designate experts to identify the cultural objects involved.

(e) Working meetings

The Chinese Government has established the Mechanism of National Inter-Ministerial Joint Meeting on Cultural Property Security. The Ministry of Public Security and SACH have also set up the Information Centre for Combating Cultural Property-related Crimes under the General Office of the National Inter-Ministerial Joint Meeting on Cultural Property Security, whose

responsibility is to provide technical support for joint efforts by the public security and cultural heritage authorities.

### **3. Inventories and identification**

#### **(a) Inventories**

It is specified in the Law that all museums, libraries, and other collection units should grade their collection of cultural objects and establish archival files for them. Beginning in 2001, cultural heritage authorities have conducted surveys of museum collections, pooling data about rare and valuable pieces in the collections of state-owned museums.

In April 2007, the Third Nationwide Survey of Cultural Heritage was conducted, involving 2,857 county-level administrative units in 31 provinces. So far the field survey has been basically completed, with final data being collected and processed.

Cultural heritage authorities have yet to conduct extensive surveys of private collections, but they are well informed of those cultural objects for auction and for entry and exit.

#### **(b) Definition of “cultural property” and “national treasures”**

The Law includes the content of Paragraphs 2 to 11 in Article 1 of the Convention of 1970 concerning the definition of “cultural property”. Other national laws also include provisions defining specific protection as noted in Paragraph 1 of Article 1 of the Convention.

All Grade-A cultural objects from museum collections, sites, and monuments under state-level protection in China have been officially identified and proclaimed.

#### **(d) Systems to combat theft and to train staff**

Training and evaluation systems for museum staff and officials of review agencies for entry and exit of cultural objects have been developed and improved. Cultural heritage authorities are responsible for supervising routine work of the above mentioned institutions and agencies.

### **4. Archaeological excavations**

#### **(a) Basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force**

The Chinese Government has always attached importance to the protection of underground cultural heritage. It has made efforts to strengthen its legislation, law enforcement, and administration and has continued to improve its supervision of archaeological excavations. As a consequence, a system for the administration of archaeological excavations has been implemented through:

- The Law of the People’s Republic of China on the Protection of Cultural Relics;
- The Regulations for the Implementation of the Law of the People’s Republic of China on the Protection of Cultural Relics;
- The Rules of the People’s Republic of China for the Administration of Foreign-related Archaeological Activities;
- The Administration Regulations of the People’s Republic of China for the Protection of Underwater Cultural Property;
- The Rules for the Administration of Archaeological Excavations;
- The Rules for the Administration of Budget Quota of Expense Used for Archaeological Survey, Prospection and Excavation;

- Suggestions Concerning Strengthening Archaeological Work Related to Capital Construction Projects;
- As well as local laws, regulations and administrative rules.

In accordance with the Law, all cultural objects preserved within the boundaries of the People's Republic of China, underground, in inland waterways, or in territorial seas belong to the State. No individuals or units are allowed to excavate underground objects without official permission. SACH is responsible for the administration of the country's archaeological activities. Except in Taiwan, Hong Kong, and Macao, cultural heritage authorities have been established in the country's 31 provinces, autonomous regions and municipalities directly under the control of the Central Government. These are responsible for the administration of the archaeological activities within their respective jurisdictions.

The basic principles of the regulations on archaeological excavations and on the monitoring of excavations are as follows:

- 1. The basic guideline of "priorities given to protection and rescue, with reasonable utilization and ever-improved administration" is adhered to for the conservation of cultural heritage. Highly restricted administration is exercised for archaeological excavations. Large-scale imperial mausoleums and tombs are currently not protected from excavation.
- 2. All archaeological excavations must be subject to examination and approval procedures.
- 3. All institutions conducting archaeological excavations and individuals leading archaeological excavation projects must hold state-recognized qualifications.
- 4. Archaeological excavations currently taking place in China can be categorized into three major types: active excavations for the purpose of scientific research, rescue-oriented excavations conducted along with capital construction projects, and rescue-oriented excavations addressing dangers caused by natural damage or human destruction.
- 5. Any foreign individuals or organizations that intend to conduct archaeological excavations within the territory of the People's Republic of China must collaborate with Chinese institutions and obtain special permission by the State Council of China.
- 6. Objects obtained from archaeological excavations should be inventoried and given proper care. In accordance with relevant regulations, such objects shall be handed over to state-owned museums, libraries or other state-owned collection institutions. No units or individuals are allowed to appropriate objects obtained from archaeological excavations.
- 7. The review and acceptance of archaeological excavation projects shall be executed by the SACH-commissioned provincial-level cultural heritage authorities. SACH has the right to carry out spot-checks of any excavation projects.
- 8. The State pays much attention to and supports efforts to sort out excavation information and publish excavation reports, with an aim to enable the general public to learn more about archaeology.

(b) Illegal excavations
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Crimes involving the looting of sites of culture have continued to happen in recent years, driven by staggering profits. These have become increasingly professionalized, violent, and intelligent. These criminal activities have caused drastic damage to sites of ancient culture and ancient tombs as well as their historic settings, posing serious threats to the security of cultural heritage in China.

There are several reasons for the recurrence of these illicit excavations:

- China has a vast and widely distributed reserve of underground cultural property, thus making it difficult to effectively protect it all.
- Illegal trafficking of cultural property is a highly profitable and low risk business.
- China's security infrastructure for the protection of cultural property has yet to be well developed and the security provisions for sites and monuments have not been fundamentally improved.

In order to improve its protection of cultural heritage, China has made efforts to strengthen its legal system for cultural property security:

- 1. Establish supervision authorities for the security of cultural property. In March 2009 SACH set up the Department of Supervision responsible for supervising cultural property security and coordinating inter-departmental efforts.
- 2. Launch special campaigns against cultural property-related crimes. From December 2009 to June 2010, the Ministry of Public Security and SACH jointly launched the Special Action Combating Cultural Property-related Crimes in key areas of the country. Through this action, the frequent occurrence of crimes in these areas has been considerably checked and the administration restored.
- 3. Apply more technical innovations to cultural heritage units. The Central Government has increased fiscal allocations in order to construct and improve safety facilities for cultural heritage units. The application of protection technology has been widely exercised in sites of ancient culture, ancient tombs and key museums.
- 4. In 2010 the State Council approved the establishment of a mechanism of the national inter-ministerial joint meeting on the security of cultural property, and its first meeting was held. This mechanism provides a more organized and systematic guarantee for the security of cultural protection.

## **5. Monitoring of the export and import of cultural property**

### **(a) Estimate of the scale of the illicit export or import of cultural property (statistics)**

No accurate data is available.

### **(b) Problem of the illicit export of cultural property**

This is a recurring problem in China. There are various reasons for this. Customs supervision often fails to catch up with ever-growing foreign trade, for which only a small number of goods for entry and exit have undergone random inspection. Compared to large profits obtained from the trafficking of cultural property, penalties against such crimes are apparently minor.

### **(c) Main rules for monitoring the export and import of cultural property**

Major laws and regulations concerning the supervision of export and import of cultural property currently in force include the Law, the Regulations for the Implementation for the Law, the Administrative Rules for the Review of Export and Import of Cultural Property, and the Standards for Reviewing the Export of Cultural Property. All these laws and regulations are applicable to all moveable cultural property and auxiliary objects attached to sites and monuments, such as building components.

### **(e) Obstacles encountered in securing the restitution of illicitly exported cultural property**

Although this issue is important for the Chinese Government, numerous obstacles have been encountered in securing restitution. There are different circumstances depending on whether an object had been illicitly exported before or after the enactment of the 1970 Convention. For those illicitly exported before the 1970 Convention, there is, in fact, no law to cite when restituting them, because no specific provisions about retroactivity are defined in any Conventions. For objects illicitly exported after the 1970 Convention, theoretically they can be restituted in accordance with the Convention; however, when the country that requests restitution of an object resorts to laws, the country that holds the object refuses to respond to action or execution for the sake of its domestic laws. Moreover, debates on internationalism and nationalism have never ceased in the international community, which has affected the return of cultural property to some extent.

(f) Circumstances in securing the restitution of a stolen cultural object

In May 2001, China successfully secured the restitution of the painted stone statue of a warrior from Wu Chuzhi's tomb, from the United States. The object was categorized as a Grade-A object. When Chinese authorities learned that the object had been stolen from China and was about to be auctioned in the US, a note was sent to the American Embassy in China requesting a suspension of the auction and the return of the statue to China. China's public security authorities informed the US National Central Bureau of INTERPOL of the case and requested its cooperation. The Chinese government provided a number of legal documents proving the statue's origin at the request of the US government. Eventually, the local court in the US notified the auction company to stop the auction and ordered that the statue be returned to China unconditionally.

**6. System for trade-in, acquisition, ownership and transfer of cultural property**

(a) Description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

There are two types of businesses dealing with cultural goods in the Chinese market: antique shops and antique auction houses. Antique shops in China number about 80 and turnover about 500 million RMB Yuan annually. There are also about 200 antique auction houses, which generate an annual transaction volume of approximately 10 billion RMB Yuan.

(b) Rules governing trade in cultural goods, measures in place for such trade (maintenance of a police register), in particular through the Internet (reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)

The main rules include the Law, the Auction Law of the People's Republic of China, the Regulations for the Implementation of the Law, the Working Rules for Antique Shops, and the Interim Regulations for the Administration of Auction of Cultural Objects. China exercises the system of pre-sale and pre-auction examination and approval and post-sale and post-auction record registration. Currently only a few antique auction houses are authorized to trade cultural goods via the Internet in China.

(c) Existing Measures to control the acquisition of cultural property

In the Circular Concerning Issues Pertaining to Stolen or Illicitly Exported Cultural Property, SACH specifies that state-owned institutions of cultural property collections and various types of registered museums shall not purchase stolen or illicitly exported cultural property.

(d) Existing legal system concerning ownership of cultural property:

### *Applicability of the principle of inalienability applied to cultural items in national collections*

The principle of inalienability is applied to all cultural property owned by the State, including all property under ground, in inland waterways, or in territorial seas; sites of ancient culture, ancient tombs, cave temples, memorial buildings, stone carvings, mural paintings, typical buildings of modern and contemporary China, proclaimed as protected units by the State; cultural objects unearthed within the boundaries of China; cultural property collected or taken care of by state-owned collection units as well as other state organs, military units, state-owned enterprises, and public organizations; cultural objects acquired or purchased by the State, cultural objects donated to the State by citizens, legal persons, or other organizations; and all other cultural objects belonging to the State in accordance with laws.

### *Status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations*

In accordance with the Law, all cultural objects unearthed within the boundaries of the State belong to the State, unless otherwise provided for by laws; any units or individuals are allowed to excavate cultural objects buried underground without official authorization. Therefore, all yet unfound cultural objects found by chance during legal or illegal excavations belong to the State.

#### (e) Special rules on the transfer of title deeds in respect of cultural property

There are no such rules existing at this time.

## **7. Bilateral agreements**

#### (a) Bilateral agreements concluded with other countries on the import, export and return of cultural property

By the end of November 2010, China had signed bilateral agreements or memoranda of understanding on preventing theft, clandestine excavations, and illicit import and export of cultural property with 13 countries including Peru, Italy, India, the Philippines, Chile, Cyprus, Venezuela, the USA, Turkey, Ethiopia, Australia, and Egypt.

The Chinese Government continues to make efforts both nationally and internationally to prevent the illicit traffic of cultural goods. It also wants to encourage the international community to pay more attention to the protection of the common cultural heritage of humanity.

#### (b) Conditions settled by the importing country with regard to the admissibility of requests for restitution from a country of origin

Cultural objects to be restituted should be stolen, looted, or illicitly exported after the relevant international conventions or bilateral agreements came into force. The country of origin should provide the necessary legal documents and evidence.

#### (c) Administrative aid or any other type of cooperation with neighbouring countries, particularly in respect of police and customs services?

There is in place a system to distribute administrative aid. For example, at the request of the Japanese Embassy in Beijing, the Chinese Government made public announcements of missing objects from Japan, prohibited the trade of these missing objects, and requested those who knew where they were to report to the cultural heritage authorities. There is no bilateral agreement in place between Japan and China on combating the illicit traffic of cultural goods.

## **II. Code of ethics, awareness raising and education**

### **1. Ethical standards**

(a) Application of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM for museums

Both these mechanisms are known to the relevant entities.

### **2. Awareness raising and education**

(b) Dissemination of the “One hundred missing objects” series and the ICOM Red Lists

They have been disseminated among a certain population of the cultural heritage and museum sector.

(c) Description of activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export.  
How far can UNESCO contribute to these activities?

Cultural heritage authorities have endeavored to raise the awareness of the general public through television, radio, Internet, and events such as interview programs and knowledge contests.

## **III. Cooperation with other international and regional agencies**

### **Police**

(a) State of national cooperation with INTERPOL. Specialized police services to whom the heritage officials can call on for enquiries, legal proceedings and punitive measures

China's public security authorities have strengthened cooperation with INTERPOL in a joint effort to combat cultural property-related crimes and retribute illicitly exported cultural property. Cultural heritage authorities can request criminal investigation departments for enquiries, legal proceedings, and punitive measures.

(b) Check on the INTERPOL database on stolen objects when a cultural object is stolen. Transmission of information on the persons implicated in the theft of cultural property

Information can be acquired through the INTERPOL database. Information on the persons implicated is also be transmitted to the database.

(c) Specific training program for members of police services

Public security officers have the opportunity to participate in training workshops organized by cultural heritage authorities.

(d) Punishment of fraud and theft related to cultural property via criminal law provisions. Specialized judges in this field

There are specific criminal legal provisions for punishment of crimes that involve theft of cultural objects and clandestine excavation of ancient tombs and sites of ancient culture. There are specialized judges in this field.

**(e) Cooperation with the United Nations Office on Drugs and Crime (UNODC)**

China has always cooperated with UNODC.

**Customs**

**(f) Status of cooperation with the World Customs Organization. Specialized customs services which could assist heritage officials in preventing the illicit export of cultural property**

China's customs authorities cooperate with the WCO. Customs authorities, inspection departments, and cultural heritage authorities make joint efforts to combat the illicit export of cultural property.

**(g) Specific training program for members of the customs administration**

Specific training programs of this nature do exist.

**(h) Reference to the UNESCO-WCO Model Export Certificate for Cultural Objects**

This model is used, but with some modifications.

**IV. Other legislative, legal and administrative measures taken by the State**

**1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects**

The 1995 UNIDROIT Convention was ratified on 7 March, 1997 by the State Council.

**2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation**

China is a Member of the Intergovernmental Committee and has actively supported and participated in events initiated and organized by the Committee.

**3. UNESCO Database of National Cultural Heritage Laws – contribution and update**

The Law has been included in the database, and China plans to provide the Regulations for the implementation of this law as well as other relevant laws and regulations.