

GLOBAL ART AND HERITAGE LAW SERIES

CHINA



Prepared for

COMMITTEE FOR
CULTURAL POLICY

Prepared by

A VOLUNTEER LAW FIRM
FOR TRUSTLAW

In Collaboration with



THOMSON REUTERS
FOUNDATION

ACKNOWLEDGEMENTS

This report has been prepared in collaboration with TrustLaw, the Thomson Reuters Foundation's global, legal pro bono service that connects law firms and legal teams to non-governmental organisations and social enterprises that are working to create social and environmental change.

The Thomson Reuters Foundation acts to promote socio-economic progress and the rule of law worldwide. The Foundation offers services that inform, connect and ultimately empower people around the world: access to free legal assistance, media development and training, editorial coverage of the world's under-reported stories and the Trust Conference.

TrustLaw is the Thomson Reuters Foundation's global pro bono legal service, connecting the best law firms and corporate legal teams around the world with high-impact NGOs and social enterprises working to create social and environmental change. We produce groundbreaking legal research and offer innovative training courses worldwide. Through TrustLaw, over 120,000 lawyers offer their time and knowledge to help organisations achieve their social mission for free. This means NGOs and social enterprises can focus on their impact instead of spending vital resources on legal support. TrustLaw's success is built on the generosity and commitment of the legal teams who volunteer their skills to support the NGOs and social enterprises at the frontlines of social change. By facilitating free legal assistance and fostering connections between the legal and development communities we have made a huge impact globally.

We have supported grassroots organisations to employ their first staff members, helped vulnerable women access loans to start their first businesses and brought renewable energy lighting to slums. Free legal assistance on these small projects has had a big impact on local communities working to overcome poverty and discrimination. At a global scale, we have supported legal reform activities to protect the rights of millions of domestic workers, changed legislation to support victims of violence, produced guides to protect people who experience street harassment, and crafted tools to support the prosecution of trafficking offenders.

Legal research reports and other TrustLaw publications are legal resources that take an in-depth look at a legal issue in a number of countries. This may be in the form of a comparative analysis of laws in different countries, or a legal landscape analysis. These resources aim to help TrustLaw members advocate for legal reform, inform policy activities or propose legal amendments.

Our resource library can be found on the TrustLaw homepage at www.trust.org.

The Committee for Cultural Policy Inc. (CCP) is a 501(c)(3) U.S. non-profit organization established to strengthen the public dialogue on arts policy and to support museum and cultural development around the world.

CCP supports public appreciation for the art of ancient and indigenous cultures. It provides resources to educational institutions, press and policy-makers. It encourages policies that preserve artifacts and archaeological sites, adequate funding for site protection, safe harbor in international museums for at-risk objects, uncensored academic research, and the development of regulatory structures that foster the lawful collection, exhibition, and global circulation of artworks.

The Global Art and Heritage Law Series is an initiative of the Committee for Cultural Policy, Inc. In addition to the Global Art and Heritage Law Series, CCP publishes in-depth legal and policy analysis and the online journal, Cultural Property News. The websites of the Committee for Cultural Policy are www.culturalpropertynews.org and www.culturalpropertylaw.org.

The Committee for Cultural Policy wishes to express its heartfelt thanks to Olivia Franklin and Hazel Levent of White & Case, LLP, who brought consummate organizational skills, patience, and dedication as well as legal expertise to this project. Without their generous contributions, the Global Art and Heritage Law Series could not have been completed.

The China Report was prepared by Yuanyou Yang. The Committee for Cultural Policy expresses its appreciation and thanks for her diligent research and unique contribution to cultural heritage studies.

Editor of Global Art and Heritage Law Series: Kate Fitz Gibbon

Reports Series Design: Walberg Design

Cover photo: Northern stars of the big dipper and Constellation Leo shines above the Wanfo Summit at the World Heritage site of Mount Emei in China. Mount Emei is a place of historical significance as one of the four holy lands of Chinese Buddhism. And for the meaning of Wanfo, is the house of the mountain's patron deity, Bodhisattva Samantabhadra, with ten thousand buddhas around it. Photo by Jeffdai1988, 15 February 2013, Creative Commons Attribution-Share Alike 3.0 Unported license

DISCLAIMER: This Report and the information it contains is provided for general information purposes only. It has been prepared as a work of legal research only and does not represent legal advice in respect of the laws of the relevant countries described herein. It does not purport to be complete or to apply to any particular factual or legal circumstances. It does not constitute and must not be relied or acted upon as legal advice or create an attorney-client relationship with any person or entity. Neither the Thomson Reuters Foundation, the Committee for Cultural Policy nor any other contributor to this Report, accepts responsibility for losses that may arise from reliance upon the information contained in this Report or any inaccuracies herein, including changes in the law since the research was finalized in 2020. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction(s) when dealing with specific circumstances. Neither the Thomson Reuters Foundation, the Committee for Cultural Policy nor any other contributor to this Report is holding itself, himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in or contribution to this Report. The contents of this report are intended to convey general information only and are not intended to provide legal advice or opinions for any purpose or particular circumstance. The contents of this report should not be construed as, nor relied upon for, legal advice under the laws of China in any particular circumstance or fact situation. There may be other laws or regulations that could affect the interpretation of certain provisions of the relevant laws which are referred to in this report. Legal advice should be obtained from legal counsel qualified in China when dealing with specific circumstances.



Great Wall of China, Diego Delso, 19 February 2006, license CC BY-SA

TABLE OF CONTENTS

Introduction	8
Domestic Law	8
International Conventions	8
Bilateral Agreements and Memorandum of Understanding	10
I. NATIONAL LAWS AND INTERNATIONAL AGREEMENTS	11
A. Timeline of Constitutions	11
B. Timeline of Laws on National Cultural Property	12
1. Prior to the Establishment of the People's Republic of China	12
2. After the Establishment of the People's Republic of China	13
C. Timeline of Criminal Laws and Civil Penalties	23
D. Timeline of Conventions and International Treaties with the United States and Europe	24
E. Timeline of Significant Agreements With Other Foreign Nations Regarding Cultural Property	26
F. National Laws on Cultural Property of Other Nations	27
G. Exemptions for Scientific and Educational Use	27
II. CULTURAL PROPERTY TERMS	27
A. What is Cultural Property?	27
1. Presently, is what constitutes "cultural property" subject to domestic laws?	27
2. Have there been changes over time in what types of objects are considered cultural property under the law or changes over time in what types of objects are considered state-owned or an inalienable part of the national heritage?	27
B. Are there classifications or categories of cultural property under the laws? (For example, tangible, intangible, state property, private property, real estate property, movable property, archaeological, Paleolithic, pre-colonial, colonial, church-owned/religious, etc.)	29
C. Does the law clearly vest title to cultural property to the state from a certain date?	30
D. Is the export of Cultural Property- prohibited, permitted, or typical?	32
1. What is the permitting System (or other mechanism) for export of cultural property, if applicable	33
2. What are the purposes of the export of such property (sale, exhibition, change)	35
3. If not state-owned, is cultural property subject to export restrictions?	35
4. Is the re-export to any nation of cultural property that is restricted under a US law or MOU under the US Cultural Property Implementation Act?	37
E. Is there legal Recognition of Religious or Other Cultural Property?	37
F. Is there legal Recognition of Private Ownership of Cultural Property?	37
G. Position on Domestic Trade	38
1. Are transfers permitted of shop or gallery or auction sales, private sales? Are they common?	38

2. Are transfers allowed in the same kinds of cultural property restricted that is from export?	40
H. Is an inventory of cultural property maintained so that it is possible to establish the date of illicit export or import? Is there a system for keeping track of this (perhaps something other than an inventory?)	40
I. Are domestic laws available both domestically and internationally so that the exporters/importers know whether, at the time of export or import, if the object was exported/imported in violation of the law? How could an exporter/importer check this?	42
J. Where to find export/import forms and other relevant registration documents	43
III. ADMINISTRATION AND ENFORCEMENT SYSTEMS AND RESULTS	44
A. Existing systems specifically designed for cultural property management and administration, and public education	44
B. Government agencies or cultural institutions that track or manage cultural property	47
C. Law enforcement and prosecutorial and penal systems involved in violations of cultural property laws	48
1. Criminal and Civil Penalties for unauthorized possession/illicit trade of cultural property	48
2. Enforcement	53
D. Courts having jurisdiction over cultural property issues	55
E. Data on prosecutions per year related to cultural property violations and data on convictions	57
F. Procedures for recovery of cultural property lost to other foreign nations	58
G. Funding sources for law enforcement and prosecutions related to cultural property	61
IV. ADMINISTRATION AND MANAGEMENT OF CULTURAL PROPERTY	62
A. Institutions or ministries that manage cultural property	62
B. Changes in the entity holding these responsibilities and why the changes occurred.	62
C. Description of the basic administrative structure/hierarchy through which an object passes	62
V. REGISTRATION OF CULTURAL PROPERTY	62
A. Institutions or ministries that manage databases or registries	62
B. Is there public access to registries/databases? Are they fee based? Is there domestic and international access?	63
C. Are there specific registration requirements for commercial property (state-owned or private) held as heirlooms or as art collections, if any?	63

VI. DOMESTIC PRIVATE OWNERSHIP AND TRANSFER BY INHERITANCE, GIFT, OR SALE	63
A. Is private ownership of cultural property permitted?	63
B. Is inheritance of cultural property or are gifts of cultural property permitted ?	63
C. Is transfer by sale of privately owned cultural property permitted?	63
VII. PREEMPTION AND CONFISCATION	64
A. Are there current or prior laws result in confiscation or seizure of private property? Under what circumstances?	64
B. Are there any specific triggers for transfer of ownership to the state of privately owned cultural property?	64
C. Is there compensation to the owner if an item is seized?	65
D. What happens to seized property?	65
E. Is there data on financial value of seized property?	65
VIII. RELIGIOUS HERITAGE AND COMMUNITY PROPERTY	65
A. Are objects of religious heritage/religious significance included or excluded from state control? If excluded, is there any management?	65
B. Do national property laws include community-owned artifacts, for example, objects used in religious rituals or ceremonies by a specific religion (minority or majority religion)?	65
C. Are there any export restrictions on religious property?	65
IX. ARCHAEOLOGICAL WORK	66
A. Unauthorized/Criminal extraction of archaeological objects/looting	66
1. Domestic Laws that Prohibit Unauthorized or Criminal Extraction of Archaeological Objects and resulting Civil and Criminal Penalties	66
2. Enforcement of Domestic Laws	68
B. State's Management of Cultural Property	68
X. PRIVATE COLLECTIONS OF CULTURAL PROPERTY	68
A. Are there private collections of cultural property?	68
B. Are there private museums?	69
C. Are private museums popular?	69
D. Is it a status issue, as to who can privately own cultural property?	69
XI. PUBLIC MARKETPLACE FOR CULTURAL PROPERTY	69
A. Online auctions	69
XII. APPLICATION OF INTERNATIONAL CULTURAL PROPERTY LAWS	70
A. Does China apply the same export restrictions that it places on its own cultural property to the cultural property of other nations? Does China allow domestic trade in cultural property of other nations which have restrictive cultural property laws?	70

B. Does China participate in international efforts to preserve cultural property in other nations?	70
XIII. TRENDS AND THE FUTURE IMPACT OF PLANS AND INITIATIVES	71
A. Museum trends	71
B. Have there been changes in national policy around cultural heritage? What does this mean for China? Is China showing that it values cultural property more or less with its policies?	71
C. Have there been changes since the 1972 UNESCO Convention?	72
D. Are there draft laws or proposals that signal significant change or differing positions?	72
E. Are there broader economic or political initiatives? What's the motivation behind these policies?	72
APPENDIX I – CHINESE CULTURE PROPERTY ON WORLD HERITAGE LIST	72

INTRODUCTION

Cultural relics laws and regulations are the basis for the comprehensive and effective protection of cultural relics. Since the amendment of the Chinese Constitution in 1982, which embedded the duty of the State to protect its cultural property in the Constitution, the Chinese national legislatures have enacted various domestic statutes, regulations and rules to protect culture property. In addition to establishing and improving its domestic legal framework, China has rectified a number of international treaties with regard to the protection of culture property. Since 1982, a relatively systematic legal regime for cultural property protection has gradually formed and taken shape. The Chinese domestic laws, administrative regulations, local regulations, departmental rules, local government regulations and other binding normative documents related to cultural relics, as well as directly applicable international conventions and multilateral and bilateral agreements, constitute the system of cultural relics laws and regulations in China. According to the National Cultural Heritage Administration's ("NCHA", formerly known as State Administration of Cultural Heritage, or SACH) website, in the last 60 years since the founding of the People's Republic of China, the Chinese government has attached great importance in building its own cultural relics protection legal system. According to rough statistics conducted by NCHA, more than 4,000 documents related to cultural relics have been issued in China since the establishment of the People's Republic of China, including more than 1,000 laws, regulations, and regulatory documents, and nearly 500 are currently valid.¹ Yet, while significant progress had been made in the last three decades in terms of the quality of legislation for the protection of the cultural property, further effort is needed to provide effective protection for China's great cultural heritage.

Domestic Law

The Law of the People's Republic of China on the Protection of Cultural Relics ("Cultural Relics Protection Law") is the principal statute that governs the protection of tangible cultural property in China. The Law of the People's Republic of China on Intangible Cultural Heritage is the principal statute that governs the protection of intangible culture property in China. The Criminal Law of the People's Republic of China identifies the punishment for intentional damage or destruction of valuable cultural relics under State protection. These statutes and their corresponding rules, regulations, interpretations and opinions also regulate the preservation of scenic resorts, ancient remains, the excavation of relics, and the protection of famous historical cities, towns, and villages, as well as the import and export of culture property from China. Today, China has formed basic cultural relic protection laws and a regulations system with the Cultural Relics Protection Law at the core. This is supported by administrative regulations, and based on departmental regulations, local regulations, local government regulations, various regulatory documents and industry standards and norms.

International Conventions

In addition to gradually establishing and improving its domestic legal framework on the protection of culture relics with the adoption of the Cultural Relics Protection Law in 1982, China has ratified a number of international treaties with regard to the protection of cultural relics and culture heritage, including the United Nations Educational, Scientific and Cultural Organization Recommendations on International Principles Applicable to Archeological Excavations (1956), the Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention), the United Nations Educational, Scientific and Culture Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the 1970 Convention), the United Nations International Institute for the Unification of Private Law (UNIDROIT) the Convention on Stolen or Illegally Exported Cultural Objects (the 1995 Convention), the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1954 Hague Convention) not including its First Protocol, and the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.

Specifically, on December 12, 1985, the Chinese National People's Congress ratified the World Heritage Convention.² In 1986, China began to declare UNESCO World Heritage projects, and started to actively participate in international cooperation in the protection of cultural relics. On October 29, 1999, China was elected as a member of the World Heritage Committee. As of July 6, 2019, China has a total of fifty-five world heritage sites, including thirty-seven world cultural heritage sites, four world cultural and natural heritage sites, and fourteen world natural heritage sites. China is now the country with the most world heritage sites, the country with the largest number of world cultural and natural

¹ Overview of Cultural Relics Laws and Regulations (1), Jianhua Zhang, National Online Education of Cultural Heritage, file:///H:/Downloads/54030021%20(1).pdf, <http://webcache.googleusercontent.com/search?q=cache:vDEatCgBklJ:edu.sach.gov.cn/front/files/download.do%3Fid%3D54030021+&cd=4&hl=zh-CN&ct=clnk&gl=us> (last visited October 30, 2019).

² Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 21, 1972, UNESCO, <http://whc.unesco.org/en/conventiontext/>; Tong Mingkang, Cultural Heritage Conservation in China: Practices and Achievements in the Twenty-First Century, GETTY CONSERVATION INSTITUTE, (2016), http://www.getty.edu/conservation/publications_resources/newsletters/31_1/practices_achievements.html.



Bodhisattva Guanyin, dry lacquer, gold, and paint, late 14th-15th century (Ming). Gift of the Doris Duke Charitable Foundation's Southeast Asian Art Collection, 2006, Walters Art Museum, Baltimore. Creative Commons Attribution-Share Alike 3.0 Unported license

heritage sites (four in parallel with Australia) and natural heritage sites. A full list of the Chinese culture property that has been added to the World Heritage List can be found in Appendix I.

The 1970 Convention is a multilateral international convention addressing the preservation of cultural property. China became a party when it submitted its instrument of acceptance to the Convention on November 28, 1989.

China is also a signatory to the 1954 Hague Convention. This Convention governs the protection of property that falls into the hands of an opposing Party during an armed conflict.

Further, China ratified the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage in 2004. This Convention identifies the practices, representations, and expressions that communities recognize as part of their cultural heritage.

Finally, China is Party to the United Nations International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects. This convention identifies policies and procedures for the return of cultural objects illegally exported from the territory of a requesting State.

To date, China has not accepted the Second Protocol of the 1954 Hague Convention, neither has it ratified the Convention on the Protection of Underwater Culture Heritage. According to the *Legal Protection of Cultural Heritage in China: A Challenge to Keep History Alive*, the major reason for China's refusal to accept the Second Protocol of the 1954 Hague Convention is that "the Criminal Code of the PRC cannot satisfy its requirements because it lacks the provisions that regulate the crimes against cultural heritage in armed conflict. As China has various territorial disputes in the Yellow Sea (with North Korea and South Korea), the East China Sea (with Japan) and the South China Sea (with Vietnam, the Philippines, Malaysia, and Brunei), it worries that the accession to the Convention on the Protection of Underwater Culture Heritage may be against its national interest."³

China actively participated in the drafting of the UNESCO Declaration of Principles relating to Cultural Objects Displaced in connection with the Second World War. Finally, during the Fourth International Conference on the Return of Cultural Property that was held in Dunhuang, China on September 9, 2004, China also adopted the Dunhuang Declaration for the Protection and Return of Cultural Relics Exported Illegally ("Dunhuang Declaration"). This declaration aims to promote the protection and return of cultural property lost overseas and is supported by more than 20 other countries.

Bilateral Agreements and Memorandums of Understanding

In addition to joining multilateral conventions of heritage protection, China has sought to sign bilateral agreements with foreign countries. As of March 2019, China has signed bilateral agreements on the prevention of theft and illegal entry and exit of cultural property with 21 countries.⁴ These countries include not only source nations, such as India, Egypt, Greece and Peru, but also market nations, such as the United States, Switzerland and Australia. Most of these countries are also contracting parties to the 1970 Convention. The Memorandum of Understanding (MOU) with the United States is particularly worth noting, as the United States is believed to be the destination of an estimated half of all Chinese cultural objects sold worldwide. China and the United States entered into a MOU on Import Restrictions Imposed on Certain Archaeological Material from China in January 2009, following a request by the Chinese authorities under the 1970 Convention.⁵ The MOU governs the importation into the U.S. of archaeological material originating in China that represents China's cultural heritage from the Paleolithic Period through the end of the Tang Dynasty (A.D. 907), including monumental sculpture and wall art at least 250 years old as of January 14, 2009. Items identified on a list to be promulgated by the United States Government (the "Designated List") may include categories of metal, ceramic, stone, textiles, other organic material, glass, and painting and imposes import restrictions on these materials.⁶ Under Article IV of the MOU, the MOU shall remain in force for a period of five years which can be extended. In January 2014, the two Governments agreed that the MOU shall be extended for an additional five years. From May 2 to 4, 2018, the United States Department of State Cultural Property Advisory Committee held a meeting to consider the proposal to extend the U.S.-China MOU.⁷ The State Department considered whether to extend a MOU that creates U.S. import restrictions based on the following four determinations under the Convention on Cultural Property Implementation Act:

³ Zhengxin Huo, *The Legal Protection of Cultural Heritage in China: A Challenge to Keep History Alive*, 22 INT'L J. OF CULTURAL POL'Y 497 (2015) (citing Zhengxin Huo, *A Protracted War: The Fight Against Illicit Traffic of Cultural Property in China*, in Jorge Sánchez Cordero, *The 1970 Convention: New Challenges* 151-74 (Jorge Sánchez Cordero, 2015).

⁴ The Culture Protection System of the People's Republic of China (中华人民共和国文物保护制度), Wikipedia (last modified Jan. 9, 2020), <https://zh.wikipedia.org/wiki/%E4%B8%AD%E5%8D%8E%E4%BA%BA%E6%B0%91%E5%85%B1%E5%92%8C%E5%9B%BD%E6%96%87%E7%89%A9%E4%BF%9D%E6%8A%A4%E5%88%B6%E5%BA%A6> (China).

⁵ Import Restrictions Imposed on Certain Archaeological Material from China, 74 Fed. Reg. 2838 (Jan. 16, 2009), <https://www.govinfo.gov/content/pkg/FR-2009-01-16/html/E9-848.htm>.

⁶ *Id.*

⁷ Cultural Property Advisory Committee Meeting May 2-4, BUREAU OF EDUC. & CULTURAL AFF. (Mar. 20, 2018) <https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-may-2-4>.



Members of a Chinese military honor guard march during a welcome ceremony for Chairman of the Joint Chiefs of Staff Marine Gen. Peter Pace at the Ministry of Defense in Beijing, China. Photo by Staff Sgt. D. Myles Cullen (USAF), 22 March 2007, public domain.

1. The cultural patrimony of the State Party is in jeopardy from pillage of its archaeological or ethnological materials;
2. The State party has taken measures consistent with the Convention to protect its cultural patrimony;
3. Application of import restrictions, in the context of a concerted international effort, to archaeological or ethnological material of the State Party would be of substantial benefit in deterring a serious situation of pillage, and less drastic remedies are not available; and
4. Application of important restrictions in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific and educational purposes.

The MOU was again extended by the two governments on January 14, 2019.⁸ Other examples of bilateral agreements includes the agreement with Egypt which requires that the Parties shall take the appropriate legal steps to recover and return the cultural property found on their territory which is stolen, exported, or transferred illicitly, and the agreement with Switzerland that states that the Parties may file actions for the repatriation of cultural property with the Party in whose territory the cultural property was illicitly imported.

I. NATIONAL LAWS AND INTERNATIONAL AGREEMENTS

A. Timeline of Constitutions

The Constitution is considered the basic and supreme law in China. In 1982, China amended its Constitution, and for the first time in history, embedded the duty of the State to protect its cultural property in the Constitution. Article 22 of the Chinese Constitution (1982 Amendment) expressly provides that “[t]he state protects places of interest, precious cultural relics and other important historical and cultural heritage.”⁹ Based on the provisions of the Constitution, the Chinese national legislatures have enacted various domestic statutes, regulations and rules to protect culture property.

⁸ Memorandum of Understanding between the United States and China: Cultural Exchanges, Property and Cooperation Import Restrictions, Jan, 10, 2019, T.I.A.S. No. 19-114.1, <https://www.state.gov/19-114-1>.

⁹ 中华人民共和国宪法 Constitution of People's Republic of China, art. 22, Dec. 4, 1982, http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4421.htm (Chinese).

In addition to establishing and improving its domestic legal framework, China has accessed a number of international treaties with regard to the protection of culture property. These points will be discussed in more detail below.

B. Timeline of Laws on National Cultural Property

1. Prior to the Establishment of the People's Republic of China

China is a country extremely rich in cultural heritage because of its long and splendid cultural history and the vastness of its geography. The tremendous amount, and the enormous variety, of cultural heritage is a priceless treasure not only of the Chinese people, but also of humanity as a whole. Culture property protection has a long tradition and history in China. In ancient China, there exist laws and records from very early history related to the protection of cultural relics. As early as the Zhou Dynasty, “Zuo Chuan Wengong Eighteen Years” records that Zhou Gong stipulated that “destroy is a thief, a thief is hidden, a bribe is a thief, a thief is a traitor, the name of the main possession, the use of rape is a murderer.”¹⁰ Translated into modern Chinese, this sentence means that the theft of national treasures (devices), like other major crimes, cannot be forgiven. There are also records in the Confucius Family Language that prohibit the flow of treasures into private transactions.¹¹ The Han Dynasty began to refer to the destruction of the royal ancestral temples, tombs, and palaces as crimes. The Han dynasties also had provisions for the protection of official residences and folk cultural relics. Although these laws were mostly aimed at the maintenance of royal dignity and domination, they undoubtedly also played an important role in history in the protection of cultural relics, especially palaces, ancestral temples and tombs.

However, since the mid nineteenth century, cultural heritage in China has suffered from armed conflicts, looting, clandestine excavation, smuggling, illicit trade and deliberate destruction. In the late Qing Dynasty, because of the invasion and war of the powers, the government's corruption and incompetence, and the lack of awareness for the protection of folk cultural relics, many precious cultural relics were destroyed or lost overseas, such as Yuanmingyuan, Mogao Grottoes, and Loulan Ancient City.

The destruction and loss of cultural relics continued until the warlords period in the early Republic of China. It wasn't until 1928 that the National Government for the Republic of China finally completed the formal reunification of China. It established the Central Antiquities Depository Committee in the same year, which became the first specialized government cultural relics management institution in China. In 1930, the Relics Preservation Law was promulgated, which was the first official cultural relics statute in China. Later, the implementation of rules and related regulations were also promulgated. These rules were heavily influenced by Western countries, and introduced the principal of disciplinary punishment for responsible officials if property protected under the law was damaged or destroyed because of inadequate protective measures.¹² The important cultural property statute and regulations enacted between 1928 and 1938, before the outbreak of the Sino-Japanese War, are listed below.

- **1928** Regulations governing the preservation of scenic resorts, ancient remains and relics¹³ (English, UNESCO database)
- **1928** Statute for Preservation of Scenic Sites, Points of Historical Importance, and Articles of Historical, Cultural and Artistic Value
- **1930** Relics Preservation Law¹⁴
- **1935** Relics Preservation Law (amended 1935) (English, UNESCO database)¹⁵
- **1935** Rules Governing the Excavation of Relics (English, UNESCO database)¹⁶

However, during the period of the anti-Japanese war and the civil war between the Kuomintang Party and the Communist Party, the cultural relics in China were once again threatened. After the conclusion of the civil war between the Kuomintang and the Communist Party in 1949, the Kuomintang Party left for Taiwan and many cultural relics of

¹⁰ Qiuming Zuo, Chun Qiu Zuo Zhuan Wen Gong: Year One to Year Eighteen (《春秋左传：文公（元年～十八年）》), <http://www.guoxue.com/book/cqzz/0006.htm> (Chinese).

¹¹ *Criminal Government*, CONFUCIUS FAMILY LANGUAGE, pt. 31st.

¹² Stefan Gruber, *Protecting China's Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law*, 10 ASIA PAC. J. OF ENV'L L. 253, 272 (last rev. June 11, 2014) (citing Statute for Preservation of Scenic Sites, Points of Historical Importance, and Articles of Historical, Cultural and Artistic Value, art. 8 (1928) (China 1928-1938)).

¹³ Regulations Governing Preservation of Scenic Resorts, Ancient Remains and Relics (Sept. 13, 1928) (China) https://en.unesco.org/sites/default/files/china_regulation_13_09_1928_eng_orof.pdf.

¹⁴ 古物保存法 [Relics Preservation Law] (1930), <https://glrs.moi.gov.tw/LawContent.aspx?id=FL053249>.

¹⁵ 古物保存法 [Relics Preservation Law] (1935), http://www.unesco.org/culture/natlaws/media/pdf/china/china_law_10_11_1935_eng_orof.pdf.

¹⁶ Rules Governing Excavation of Relics (Mar. 16, 1935) (China) https://en.unesco.org/sites/default/files/china_rules2_16_03_1935_eng_orof.pdf.



Mao Zedong exhibition at National Museum of China on the 120th anniversary of his birth. Photo by Daniel Case, 29 March 2014, Creative Commons Attribution-Share Alike 3.0 Unported license.

the National Palace Museum were transported to Taiwan in the process. In the years to come, the authorities of the People's Republic of China issued orders and regulations to restrict the export of cultural relics and to improve their protection.

2. After the Establishment of the People's Republic of China

After the founding of the People's Republic of China in 1949, the China National Cultural Relics Bureau and the Local Cultural Relics Management Committee were established, which were responsible for cultural relics protection and archaeological excavation. In 1961, the "Provisional Regulations on the Administration of Cultural Relics Protection",¹⁷ the first regulation for culture relics protection under the new government regime, was promulgated, and the first batch of national key cultural relics protection units was announced.¹⁸ However, with the outbreak of the Cultural Revolution in 1966, China's cultural relics protection work stagnated. During the Culture Revolution period, almost all existing protection mechanisms of culture property as well as most of the legal system and existing laws were abandoned in China and almost all historical or traditional objects or ideologies were considered evil and were criticized. A large number of temples and sites were attacked by the Red Guards. Many cultural relics including Buddha statues, arches and stone tablets were destroyed, such as the Qufu Confucius Temple, Huangdi Mausoleum, Yuewang Temple, and the Baogong Temple. The Cultural Revolution period certainly can be seen as one of the darkest chapters for culture protection and for Chinese society as a whole.

After the Cultural Revolution, China's cultural relics protection work gradually resumed. In May 1967, the Central Committee of the Communist Party of China issued "Several Opinions on Protecting Cultural Relics Books in the Great Proletarian Cultural Revolution,"¹⁹ which brought some small relief for China's heritage. Yet, as mentioned above, it was not until 1982 that there was a Chinese Constitution Amendment which imposed the duty of the State to protect its cultural property. This was in the fourth Constitution after the founding of the People's Republic of China. Since then, the National People's Congress ("NPC") for the People's Republic of China and its Standing Committee ("NPCSC") have enacted various national statutes that have direct bearing on the protection of cultural property. Among those,

¹⁷ Notice from the Council of State Affairs on the Publication of the Provisional Regulations on the Protection and Administration of Cultural Heritage (Chinese), <https://en.unesco.org/cultnatlaws/list> (last visited November 14, 2019), Note du Conseil des Affaires d'Etat relative à la Publication du Règlement Provisoire sur la Protection et l'Administration du Patrimoine Culturel [Notice from the Council of State Affairs on the Publication of the Provisional Regulations on the Protection and Administration of Cultural Heritage], Mar. 4, 1961, (French) https://en.unesco.org/sites/default/files/china_note_04_03_1961_frce_orof.pdf.

¹⁸ WEIMING ZHANG, THE PRACTICE AND EFFECT ANALYSIS OF CHINESE CULTURAL RELICS PROTECTION SYSTEM IN MODERN TIMES 138.

¹⁹ 关于无产阶级文化大革命中保护文物图书的几点意见 [Several Opinions on Protecting Cultural Relics Books in the Great Proletarian Cultural Revolution], WIKIPEDIA, (last edited Jan. 21, 2019) <https://zh.wikisource.org/zh-hans/关于无产阶级文化大革命中保护文物图书的几点意见>.

the most significant applicable national statute is the Law of the People's Republic of China on Protection of Cultural Relics ("Culture Relics Protection Law") which was passed at the 25th Session of the NPCSC on 19 November 1982, coming into force on the same day. The Culture Relics Protection Law is still effective at present after substantial amendments, assuming a prominent role in cultural heritage protection in China. When first enacted in 1982, the Culture Relics Protection Law contained 33 articles arranged under eight chapters, with headings that are indicative of their respective scope: Chapter One, "General provisions" (articles 1–6); Chapter Two, "Entities in charge of the protection of cultural objects" (articles 7–15); Chapter Three, "Archaeological excavations" (articles 16–21); Chapter Four, "Cultural objects in the collection of public institutions" (articles 22–23); Chapter Five, "Cultural objects in private collection" (articles 24–26); Chapter Six, "Taking cultural objects out of the PRC" (articles 27–28); Chapter Seven, "Rewards and penalties" (articles 29–31); and Chapter Eight, "Supplementary provisions" (articles 32–33).²⁰ The Ministry of Culture was given the authority over cultural heritage protection under the statute.²¹ Subsequently, the Culture Relics Protection Law was amended for the first time on June 29, 1991 in accordance with the Decision on Amending the Law of the People's Republic of China on Protection of Cultural Relics adopted at the 20th Meeting of the NPCSC of the Seventh NPC. It was amended for the second time on October 28, 2002 in accordance with the Decision on Amending the Law of the People's Republic of China on Protection of Cultural Relics adopted at the 30th Meeting of the NPCSC of the Ninth NPC.

The 2002 Amendment extended the statute from 33 articles to 80 articles and reshaped the Chapters as follows: Chapter One, 'General provisions' (articles 1–12); Chapter Two, 'Immovable cultural objects' (articles 13–26); Chapter Three, 'Archaeological excavations' (articles 27–35); Chapter Four, 'Cultural objects in the collection of public institutions' (articles 36–49); Chapter Five, 'Cultural objects in private collection' (articles 50–59); Chapter Six, 'Entry and exit of cultural objects' (articles 60–63); Chapter Seven, 'Legal liabilities' (articles 64–79); and Chapter Eight, 'Supplementary provisions' (article 80). The 2002 Amendment has greatly strengthened the protection of culture relics in the following ways. First, the 2002 Amendment has established protection rather than exploitation as the highest priority. Second, the 2002 Amendment prohibits the government from sacrificing cultural heritage for economic development. Third, the 2002 Amendment for the first time establishes official cultural objects shops and auctions. Fourth, the 2002 Amendment for the first time partially legalizes private transactions that were previously prohibited. Finally, the 2002 Amendment placed the National Cultural Heritage Administration (NHCA) in charge of cultural heritage protection in China. The Culture Relics Protection Law was amended for a third time on December 29, 2007 in accordance with the Decision on Amending the Law of the People's Republic of China on Protection of Cultural Relics adopted at the 31st Meeting of the NPCSC of the Tenth NPC, the fourth time on June 29, 2013 in accordance with the Decision on Amending the Law of the People's Republic of China on Protection of Cultural Relics adopted at the 3rd Meeting of the NPCSC of the Twelfth NPC, for the fifth time on April 24, 2015 in accordance with the Decision on Amending the Law of the People's Republic of China on Protection of Cultural Relics adopted at the 14th Meeting of the NPCSC of the Twelfth NPC, and most recently for the sixth time on November 4, 2017 in accordance with the Decision on Amending the Law of the People's Republic of China on Protection of Cultural Relics adopted at the 30st Meeting of the NPCSC of the Twelfth NPC.

With the Law of the People's Republic of China on Protection of Cultural Relics as the core, many relevant laws and regulations have been promulgated, and numerous protection lists including lists of historical and cultural cities have been published. In addition to the Culture Relics Protection Law, the Rules for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics were first introduced by the State Council in 1999, adding more detailed regulations on the protection of culture relics.²² The Rules for the Implementation were later replaced by the Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics ("Culture Relics Protection Implementation Regulations") in 2003, providing higher regulatory protection of cultural relics. The Culture Relics Protection Implementation Regulations were then amended for the first time in accordance with the Decision of the State Council on Amending Some Administrative Regulations on February 6, 2016, and for the second time in accordance with Decision of the State Council on Amending Some Administrative Regulations on March 1, 2017.²³ There are also countless legal instruments and specific regulations enacted by local governments and authorities over the years. Some of these regulations were developed in cooperation with foreign institutions, such as the Principles for the Conservation of Heritage Sites in China, which were formulated in cooperation with the Getty Conservation Institute and the former Australian Heritage Commission.

The past three decades have witnessed an amazing acceleration in the rate of, and significant progress in the quality

²⁰ Legal Protection of Cultural Heritage in China: A Challenge to Keep History Alive, at 3 <http://orcp.hustoj.com/wp-content/uploads/2016/01/2015-Legal-protection-of-cultural-heritage-in-China-a-challenge-to-keep-history-alive.pdf>.

²¹ Legal Protection of Cultural Heritage in China: A Challenge to Keep History Alive, at 4 <http://orcp.hustoj.com/wp-content/uploads/2016/01/2015-Legal-protection-of-cultural-heritage-in-China-a-challenge-to-keep-history-alive.pdf>.

²² Rules for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics, http://www.gov.cn/banshi/2005-08/21/content_25090.htm (last visited October 30, 2019).

²³ Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics, http://www.gov.cn/gongbao/content/2017/content_5219151.htm (last visited October 30, 2019).



Map showing Eight Banners Brigade barracks, temples, villages, bridges, mountains, and the Summer Palace, Beijing, author unknown, after 1888. Library of Congress, Gift of Thomas Goodrich.

of, legislation in the People's Republic of China. A relatively systematic legal regime for cultural heritage protection has gradually taken shape. According to rough statistics conducted by State Administration of Cultural Heritage (SACH), more than 4,000 documents related to cultural relics have been issued in China since the establishment of the People's Republic of China, including more than 1,000 laws, regulations, and regulatory documents, and nearly 500 are currently valid.²⁴ In 2005, the Chinese SACH announced the use of the "four birds around the sun" gold ornaments of the Chinese cultural heritage logo, as an official symbol of Chinese cultural relics protection, research, collection and other fields.²⁵ Since 2006, China has adopted the second Saturday of June each year as "Cultural Heritage Day" to enhance the awareness of cultural heritage protection of the whole society.

The detailed timeline of the most important culture relics protection laws, regulations and rules is listed below:

March 1961 Notice from the Council of State Affairs on the Publication of the Provisional Regulations on the Protection and Administration of Cultural Heritage [《国务院关于发布文物保护管理暂行条例的通知》][Note du Conseil des Affaires d'Etat relative à la publication du Règlement Provisoire sur la Protection et l'Administration du Patrimoine Culturel] (Chinese and French, UNESCO database)²⁶

May 1967 Several Opinions on Protecting Cultural Relics Books in the Great Proletarian Cultural Revolution [《关于无产阶级文化大革命中保护文物图书的几点意见》]²⁷

November 1982 Law of the People's Republic of China on the Protection of Cultural Relics [《中华人民共和国文物保护

²⁴ ZHANG JIANHUA, 文物法律法规概述 [OVERVIEW OF CULTURAL RELICS LAWS AND REGULATIONS, <http://webcache.googleusercontent.com/search?q=cache:vDEatCgBklJ:edu.sach.gov.cn/front/files/download.do%3Fid%3D54030021+&cd=4&hl=zh-CN&ct=clnk&gl=us> (last visited October 30, 2019) (Chinese).

²⁵ The State Administration of Cultural Heritage Officially Announces the "Chinese Cultural Heritage Mark," CENTRAL PEOPLE'S GOV'T OF THE PEOPLE'S REPUBLIC OF CHINA, Aug. 17, 2005, http://www.gov.cn/zfjs/2005-08/17/content_24034.htm (Chinese).

²⁶ Note du Conseil des Affaires d'Etat relative à la Publication du Règlement Provisoire sur la Protection et l'Administration du Patrimoine Culturel [Notice from the Council of State Affairs on the Publication of the Provisional Regulations on the Protection and Administration of Cultural Heritage] (Mar. 4, 1961) (French) https://en.unesco.org/sites/default/files/china_note_04_03_1961_frce_orof.pdf.

²⁷ 关于无产阶级文化大革命中保护文物图书的几点意见 [Several Opinions on Protecting Cultural Relics Books in the Great Proletarian Cultural Revolution]. WIKISOURCE (May 14, 1967), <https://zh.wikisource.org/zh-hans/关于无产阶级文化大革命中保护文物图书的几点意见> (Chinese, nonofficial version).

法》](Chinese and English)²⁸

October 1989 Regulations of the People's Republic of China Concerning the Administration of the Protection of the Underwater Cultural Heritage [《中华人民共和国水下文物保护管理条例》]²⁹

February 1991 Notes on the Amendment (Draft) to the Law of the People's Republic of China on the Protection of Cultural Relics (《关于《中华人民共和国文物保护法修正案(草案)》的说明》)³⁰

June 1991 Law of the People's Republic of China on Protection of Cultural Relics (First Amendment) [《中华人民共和国文物保护法》(1991年第一次修订)]³¹

August 1992 Rules for the Implementation of the Cultural Relics Protection Law of the People's Republic of China [《中华人民共和国文物保护法实施细则》](Expired and Replaced by Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics in 2003)³²

November 2001 Notice on the Issuance of the Limits of Exit Identification for the Works of the Late Famous Writers and Painters of the Year 1949 and the Famous Writers and Painters of the Year 1795-1949 [《关于颁发“一九四九年后已故著名书画家”和“一七九五至一九四九年间著名书画家”作品限制出境鉴定标准的通知》]³³

December 2001 Administrative Measures for the Use of Special Grants for National Key Cultural Relics Protection [《国家重点文物保护单位专项补助经费使用管理办法》]³⁴

October 2002 The Law of the People's Republic of China on Protection of Cultural Relics (Second Amendment) [《中华人民共和国文物保护法》](2002年第二次修订)³⁵

March 2003 Regulations on the Risk and Safety Protection Levels of Cultural Relics System Museums [《文物系统博物馆风险等级和安全防护级别的规定》]³⁶

April 2003 Management Measures for the Protection of Cultural Heritage Protection Projects [《文物保护单位工程管理办法》]³⁷



Bell, bronze, ca. 1105 Sung dynasty, China. The emperor Huizong (reigned 1100-1126) cast new sets of bells to bring ritual court music into accordance with ancient standards based on a 5th century BC form. On each bell, the name of the pitch was engraved on one side and characters meaning “Bureau of Music” on the other. Walters Art Museum, Baltimore. Creative Commons Attribution-Share Alike 3.0 Unported license.

28 中华人民共和国文物保护法 [Law of the People's Republic of China on Protection of Cultural Relics], promulgated by the Standing Comm. Nat'l People's Cong., Nov. 19, 1982, rev'd June 29, 1991 and Oct. 28, 2002.

29 Regulations of the People's Republic of China Concerning the Administration of the Protection of the Underwater Cultural Heritage, promulgated by Decree No. 42 of 2th St. Council, Oct. 20, 1989.

30 Notes on the Amendment (Draft) to the Law of the People's Republic of China on the Protection of Cultural Relics, Standing Comm. Nat'l People's Cong., Feb. 25, 1991, http://www.npc.gov.cn/zgrdw/wxzl/gongbao/2000-12/28/content_5002552.htm (Chinese).

31 Law of the People's Republic of China on Protection of Cultural Relics, amended by the Standing Comm. Nat'l People's Cong., June 29, 1991, [https://zh.wikisource.org/zh-hans/中华人民共和国文物保护法_\(1991年\)](https://zh.wikisource.org/zh-hans/中华人民共和国文物保护法_(1991年)) (Chinese, unofficial version).

32 The Rules for the Implementation of the Cultural Relics Protection Law of the People's Republic of China was replaced by Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics, Nat'l People's Cong., Aug. 21, 2003, http://www.gov.cn/banshi/2005-08/21/content_25090.htm (Chinese).

33 Notice on the Issuance of the Limits of Exit Identification for the Works of the Late Famous Writers and Painters of the Year 1949 and the Famous Writers and Painters of the Year 1795-1949 Administrative Measures for the Entry and Exit of Cultural Relics, Decree No. 42, CHINA GUARDIAN AUCTION, July 13, 2007, (2001), <http://www.cguardian.com/pmzn/qtfw/wwwjxggd/index.shtml> (last visited October 27, 2019).

34 Administrative Measures for the Use of Special Grants for National Key Cultural Relics Protection, <https://baike.baidu.com/item/%E5%9B%BD%E5%AE%B6%E9%87%8D%E7%82%B9%E6%96%87%E7%89%A9%E4%BF%9D%E6%8A%A4%E4%B8%93%E9%A1%B9%E8%A1%A5%E5%8A%A9%E7%BB%8F%E8%B4%B9%E4%BD%BF%E7%94%A8%E7%AE%A1%E7%90%86%E5%8A%9E%E6%B3%95>.

35 The Law of the People's Republic of China on Protection of Cultural Relics, *infra* n. 28 (Chinese).

36 Regulations on the Risk and Safety Protection Levels of Cultural Relics System Museums, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=2928>.

37 Management Measures for the Protection of Cultural Heritage Protection Projects, promulgated by Order No. 26 of the Ministry of Culture on Apr. 1, 2003, released Oct. 2, 2010, <http://www.ccm.gov.cn/zgwhscw/bmgz/201010/bd279473630f44fa8a1f79f9342fe8d2.shtml>.

May 2003 Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics [《中华人民共和国文物保护法实施条例》]³⁸

March 2005 Opinion of the General Office of the State Council on Strengthening the Protection of Intangible Cultural Heritage [《国务院办公厅关于加强我国非物质文化遗产保护工作的意见》]³⁹

October 2005 Measures for the Management of Special Funds for the Protection of Large Sites [《大遗址保护专项经费管理办法》]⁴⁰

December 2005 Management Measures of Museums [《博物馆管理办法》]⁴¹

August 2015 Provisional Provisions on the Funding Arrangements for Special Appropriation Projects for Cultural Relics Protection [《文物保护特批项目经费安排暂行规定》]⁴²

October 2006 Regulation on Protection of the Great Wall [《长城保护条例》]⁴³

February 2006 Notice of the National Cultural Heritage Administration on the Administration of Chinese Cultural Heritage Marks [《国家文物局关于发布《中国文化遗产标志管理办法》的通知》]⁴⁴

April 2007 Standards for the Exit Audit of Cultural Relics [《文物出境审核标准》]⁴⁵

July 2007 Management Measures for the Entry and Exit of Cultural Relics [《文物进出境审核管理办法》]⁴⁶

March 2007 Interim Measures for the Evaluation and Consultation management of Third-party Institutions on the Issue of National Science and Technology Support Program in the Field of Cultural Heritage Protection [《文化遗产保护领域国家科技支撑计划课题第三方机构评估咨询管理暂行办法》]⁴⁷

December 2007 Law of the People's Republic of China on Protection of Cultural Relics (Third Amendment) [《中华人民共和国文物保护法》(2007年第三次修订)]⁴⁸

April 2008 Regulation on Protection of Famous Historical Cities, Towns and Villages [《历史文化名城名镇名村保护条例》]⁴⁹

October 2008 Regulations of the National Commission for the Identification of Cultural Relics [《国家文物鉴定委员会管理规定》]⁵⁰

October 2008 Management Measures for the Assessment of Senior Professional and Technical Qualifications of the National Cultural Heritage Administration ([《国家文物局高级专业技术资格评定管理办法》]⁵¹

October 2008 Temporary Provisions on the Funding Arrangements for Special Appropriation Projects for Cultural Relics Protection [《文物保护特批项目经费安排暂行规定》]⁵²

38 Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics, St. Council Order No. 377, May 18, 2003, http://www.gov.cn/zwggk/2005-05/23/content_153.htm.

39 The Opinion of the General Office of the State Council on Strengthening the Protection of Intangible Cultural Heritage, St. Council issued No. 18 (2005) http://www.gov.cn/gongbao/content/2005/content_63227.htm.

40 Measures for the Management of Special Funds for the Protection of Large Sites, Ministry of Commerce, October 9, 2005, <http://www.mofcom.gov.cn/article/bh/200510/20051000522824.html>.

41 Management Measures of Museums, Ministry of Culture Decree No. 35, Dec. 22, 2005, http://www.gov.cn/flfg/2006-01/09/content_151766.htm.

42 Provisional Regulations on the Funding Arrangements for Special Appropriation Projects for Cultural Relics Protection, Aug. 25, 2005. <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=2934>.

43 Regulation on protection of the Great Wall, promulgated by Decree No. 476 of St. Council Oct. 11, 2006, effective Dec. 1, 2006.

44 Notice of the State Administration of Cultural Relics on the Administration of Chinese Cultural Heritage Signs, approved by the 2nd Council of the St. Admin. Of Cultural Heritage Jan. 26, 2006, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=6331>.

45 Standards for the Exit Audit of Cultural Relics, June 5, 2007, http://www.gov.cn/zwggk/2007-09/03/content_735194.htm.

46 Management Measures for the Entry and Exit of Cultural Relics, approved by the Ministry of Culture on July 3, 2007, promulgated July 13, 2007, http://www.gov.cn/ziliao/flfg/2007-09/19/content_754173.htm.

47 Interim Measures for the Evaluation and Consultation management of Third-party Institutions on the Issue of National Science and Technology Support Program in the Field of Cultural Heritage Protection, May 18, 2009, www.lwcj.com/w/TechnicFiles090518038_1.html.

48 Decision of the Standing Committee of the National People's Congress on Amending the Law of the People's Republic of China on the Protection of Cultural Relics, adopted 31st Meeting of the Standing Comm. Nat'l People's Cong. Dec. 29, 2007, http://www.gov.cn/flfg/2007-12/29/content_847433.htm (last visited November 14, 2019).

49 Regulation on Protection of Famous Historical Cities, Towns and Villages, adopted by 3rd Exec. Meeting St. Council Apr. 2, 2008, effective July 1, 2008, http://www.gov.cn/zwggk/2008-04/29/content_957280.htm.

50 Regulations of the National Commission for the Identification of Cultural Relics, effective Jan. 12, 2006, gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=2929.

51 Management Measures for the Assessment of Senior Professional and Technical Qualifications of the State Administration of Cultural Relics Aug. 9, 2006, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=2932>.

52 Temporary Provisions on the Funding Arrangements for Special Appropriation Projects for Cultural Relics Protection, <http://www.ccrpf.org.cn/Public/Detail/a6b513f7-dea4-4a4d-a356-ee8245ea8aa7>.

Garlic Head Vase, 1736-1795 (Qing dynasty (1644-1911)) China, Acquired by William T. or Henry Walters, Walters Art Museum, Baltimore. Creative Commons Attribution-Share Alike 3.0 Unported license.



August 2009 Interim Measures for the Administration of Cultural Relics Identification [《文物认定管理暂行办法》]⁵³

February 2011 Law of the People's Republic of China on Intangible Cultural Heritage [《中华人民共和国非物质文化遗产法》]⁵⁴

August 2011 Management Regulations on the Operating Activities of State-Owned Cultural Relics Protection Units(Trial)[《国有文物保护单位经营性活动管理规定（试行）》]⁵⁵

August 2011 Notice of the Ministry of Public Security and the National Cultural Heritage Administration on Further Strengthening the Safety Work of Museums [公安部、国家文物局《关于进一步加强博物馆安全工作的通知》]⁵⁶

September 2011 Regulations on the Supervision and Administration of Cultural Relics Safety Cases of the National Cultural Heritage Administration (Trial) [《国家文物局文物安全案件督查督办管理规定（试行）》]⁵⁷

December 2011 Measures for Law Enforcement Inspection of Cultural Relics Protection Units [《文物保护单位执法巡查办法》]⁵⁸

February 2013 Notice on the Issuance of the “Exclusion of the Appraisal Standards of the Late Famous Writers and Painters after 1949 (Second Batch)” [《关于发布《1949年后已故著名书画家作品限制出境鉴定标准（第二批）》的通知》]⁵⁹

June 2013 Law of the People's Republic of China on Protection of Cultural Relics (Fourth Amendment) [《中华人民共和国文物保护法》2013年第四次修订]⁶⁰

June 2013 Measures for the Management of Special Subsidy Funds for the Protection of State Key Cultural Relics[《国家重点文物保护单位专项补助资金管理办法》]⁶¹

December 2013 Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics (Revised in 2013) [《中华人民共和国文物保护法实施条例》[2013第一次修订]]⁶²

April 2014 Notice of the National Cultural Relics Administration on the Issuance of “Management Measures on the Qualification of Cultural Relics Protection Reconstruction and Design Engineers (Trial)”, “Management Measures on the Qualification of Cultural Relics Protection Constructions (Trial)” and “Management Measures the Cultural Relics Protection Engineering Supervision (Trial)” [《文物局关于印发《文物保护工程勘察设计资质管理办法（试行）》、《文物保护工程施工资质管理办法（试行）》、《文物保护工程监理资质管理办法（试行）》的通知》]⁶³

February 2014 Highlights of the Work of the National Cultural Heritage Administration in 2014 [《国家文物局2014年工作要点》]⁶⁴

August 2014 Measures for the Restoration and Management of Movable Cultural Relics [《可移动文物修复管理办法》]⁶⁵

53 Interim Measures for the Administration of Cultural Relics Identification, Aug. 5, 2009, CENTRAL PEOPLE'S GOV'T OF THE PEOPLE'S REPUBLIC OF CHINA, [HTTP://WWW.GOV.CN/FLFG/2010-01/13/CONTENT_1509376.HTM](http://www.gov.cn/flfg/2010-01/13/content_1509376.htm).

54 The Law of the People's Republic of China on Intangible Cultural Heritage, adopted by the Standing Comm. Nat'l People's Cong. Feb. 25, 2011, promulgated Nov. 19, 1982, CENTRAL PEOPLE'S GOV'T OF THE PEOPLE'S REPUBLIC OF CHINA, [HTTP://WWW.GOV.CN/FLFG/2011-02/25/CONTENT_1857449.HTM](http://www.gov.cn/flfg/2011-02/25/content_1857449.htm).

55 Management Regulations on the Operating Activities of State-Owned Cultural Relics Protection Units(Trial), approved by the State Admin. Of Cultural Heritage Aug. 17, 2011, CENTRAL PEOPLE'S GOV'T OF THE PEOPLE'S REPUBLIC OF CHINA, [HTTP://WWW.GOV.CN/GZDT/2011-09/01/CONTENT_1937792.HTM](http://www.gov.cn/gzdt/2011-09/01/content_1937792.htm).

56 Notice of the Ministry of Public Security and the National Cultural Relics Administration on Further Strengthening the Safety Work of Museums, Aug. 30, 2011, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=10949>.

57 Regulations on the Supervision and Administration of Cultural Relics Safety Cases of the State Administration of Cultural Relics (Trial), approved by the State Admin. Of Cultural Heritage Aug. 31, 2011, CENTRAL PEOPLE'S GOV'T OF THE PEOPLE'S REPUBLIC OF CHINA, [HTTP://WWW.GOV.CN/ZWGG/2011-10/10/CONTENT_1965468.HTM](http://www.gov.cn/zwgg/2011-10/10/content_1965468.htm).

58 Measures for Law Enforcement Inspection of Cultural Relics Protection Units, Dec. 11, 2011, LAWLIB.COM, [HTTP://WWW.LAW-LIB.COM/LAW/LAW_VIEW.ASP?ID=371955](http://www.law-lib.com/law/law_view.asp?id=371955).

59 Administrative Measures for the Entry and Exit of Cultural Relics, *supra* n. 33.

60 Law of the People's Republic of China on Protection of Cultural Relics, 4th Amend., June 29, 2013.

61 Measures for the Management of Special Subsidy Funds for the Protection of State Key Cultural Relics, http://www.gov.cn/gongbao/content/2013/content_2489969.htm.

62 Rules for the Implementation of the Law of the People's Republic of China on the Protection of Cultural Relics, promulgated by Order No. 377 of State Council of the People's Repub. Of China May 18, 2003, rev'd Dec. 7, 2013, pkulaw.cn/%28S%28pvgj1x45wuwnwm5555df4e55%29%29/fulltext_form.aspx?Db=alftwotile&Gid=381f01665fbdbe1fbdfb (Chinese, pkulaw website)

63 Notice of the National Cultural Heritage Administration on the Issuance of “Management Measures on the Qualification of Cultural Relics Protection Reconstruction and Design Engineers (Trial)”, “Management Measures on the Qualification of Cultural Relics Protection Constructions (Trial)” and “Management Measures the Cultural Relics Protection Engineering Supervision (Trial)”, Bureau of Cultural Relics, Apr. 8, 2014, http://www.gov.cn/gongbao/content/2014/content_2729584.htm.

64 Highlights of the Work of the State Administration of Cultural Relics in 2014, STATE ADMIN. OF CULTURAL HERITAGE, Feb. 4, 2014, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=8277>.

65 Measures for the Restoration and Management of Movable Cultural Relics, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=990>.



Ceramic wall tiles, Forbidden City, Beijing, China Diego Delso, 19 February 2006, license CC BY-SA

January 2015 Regulations on Museums [《博物馆条例》]⁶⁶

April 2015 Law of the People's Republic of China on Protection of Cultural Relics (Fifth Amendment) [《中华人民共和国文物保护法》(2015年第5次修订)]⁶⁷

August 2015 Notice of the National Cultural Heritage Administration on the Issuance of Notice of Management Measures On the Report on Violations of Cultural Relics (Trial) [《文物局关于印发《文物违法行为举报管理办法（试行）》的通知》]⁶⁸

December 2015 Circular of the Legislative Affair Office of the State Council on Seeking Public Comments on Revised

⁶⁶ Regulations on Museums, adopted 78th Exec. Meeting of State Council on Jan. 14, 2015, implemented on Mar. 20, 2015, http://www.gov.cn/zhengce/content/2015-03/02/content_9508.htm.

⁶⁷ Law of the People's Republic of China on Protection of Cultural Relics, *supra* n. 31.

⁶⁸ Notice of the National Cultural Heritage Administration on the Issuance of Notice of Management Measures On the Report on Violations of Cultural Relics (Trial), Bureau of Cultural Relics, Aug. 10, 2015, http://www.gov.cn/gongbao/content/2016/content_5036292.htm.

Draft on Cultural Relics Protection Law of the People's Republic of China (Draft for Review) [《国务院法制办公室关于《中华人民共和国文物保护法修订草案（送审稿）》公开征求意见通知》]⁶⁹

February 2016 Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics (Second Amendment)[《中华人民共和国文物保护法实施条例 2016年第二次修订》]⁷⁰

March 2016 National Cultural Heritage Administration Measures for the Examination of the Subject Matter of Cultural Relics Auction [文物局《文物拍卖标的审核办法》]⁷¹

June 2016 Notice on Strengthening the Work of Revolutionary Cultural Relics [《关于加强革命文物工作的通知》]⁷²

August 2016 Decision on the Publication of “the Legislative Work Regulations of the National Cultural Heritage Administration” [《关于公布《国家文物局立法工作规定》的决定》]⁷³

October 2016 Several Opinions on Promoting the Rational Use of Cultural Relics [《关于促进文物合理利用的若干意见》]⁷⁴

October 2016 Administrative Measures for the Auction of Cultural Relics [《文物拍卖管理办法》]⁷⁵

January 2017 Proposed Draft Amendment Law of the People's Republic of China on Protection of Cultural Relics (Chinese) [《中华人民共和国文物保护法送审稿》]⁷⁶

January 2017 Decision on the Publication of “the List of Random Spot Checks of the State Administration of Cultural Relics” and “the Rules of The National Cultural Administration of Cultural Relics on Random Spot Checks” [《关于公布《国家文物局随机抽查事项清单》和《国家文物局随机抽查工作细则》的决定》]⁷⁷

January 2017 Notice on the Issuance of the “Key Points of Work of the National Cultural Heritage Administration for 2017” [《关于印发《国家文物局2017年工作要点》的通知》]⁷⁸

February 2017 The NCHA's 13th Five-Year Plan for the Development of National Cultural Relics [国家文物局《国家文物事业发展“十三五”规划》]⁷⁹

October 2017 Regulations for the Implementation of the Law of the People's Republic of China on the Protection of Cultural Relics (Revised in 2017) [《中华人民共和国文物保护法实施条例（2017年第三次修订）》]⁸⁰

October 2017 National Archaeological Site Park Creation and Operation Management Guide (Trial) [《国家考古遗址公园创建及运行管理指南（试行）》]⁸¹

November 2017 Law of the People's Republic of China on Protection of Cultural Relics (Sixth Amendment) [《中华人民共和国文物保护法》2017第6次修正]⁸²

69 国务院法制办公室关于《中华人民共和国文物保护法修订草案（送审稿）》公开征求意见通知[Circular of the Legislative Affair Office of the State Council on Seeking Public Comments on Revised Draft on Cultural Relics Protection Law of the People's Republic of China (Draft for Review)], LEXISNEXIS, Dec. 28, 2015, <https://hk.lexiscn.com/law/law-chinese-1-2731221.html>.

70 Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics, 2nd Amend., Feb. 6, 2016, WikiSource, [https://zh.wikisource.org/zh-hans/中华人民共和国文物保护法实施条例_\(2016年\)_\(nonofficial_source\)](https://zh.wikisource.org/zh-hans/中华人民共和国文物保护法实施条例_(2016年)_(nonofficial_source)).

71 National Cultural Heritage Administration Measures for the Examination of the Subject Matter of Cultural Relics Auction, MINISTRY OF COM., Aug. 18, 2016, <http://ltfzs.mofcom.gov.cn/article/tongjiipeixun/difangpeixun/201608/20160801382042.shtml>.

72 Notice on Strengthening the Work of Revolutionary Cultural Relics, STATE ADMIN. OF CULTURAL HERITAGE, July 14, 2016, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=6327&detailType=1&code=0803000000>.

73 Decision on the Publication of the Legislative Work Regulations of the State Administration of Cultural Relics, STATE ADMIN. OF CULTURAL HERITAGE, Aug. 1, 2016, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=10813&detailType=1&code=0803000000>.

74 Several Opinions on Promoting the Rational Use of Cultural Relics, STATE ADMIN. OF CULTURAL HERITAGE, Oct. 18, 2016, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=6328&detailType=1&code=0803000000>.

75 Administrative Measures for the Auction of Cultural Relics, MINISTRY OF COM., Nov. 10, 2016, <http://ltfzs.mofcom.gov.cn/article/tongjiipeixun/difangpeixun/201611/20161101689183.shtml>.

76 Proposed Draft Amendment Law of the People's Republic of China on Protection of Cultural Relics, <http://www.gdahz.com/article/content-laljf-y.html>.

77 Decision on the Publication of the List of Random Spot Checks of the State Administration of Cultural Relics and the Rules of the National Cultural Heritage Administration on Random Spot Checks, STATE ADMIN. OF CULTURAL HERITAGE, Jan. 18, 2017, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=6975&detailType=1&code=0803000000>.

78 Notice on the Issuance of the “Key Points of Work of the State Administration of Cultural Relics for 2017”, STATE ADMIN. OF CULTURAL HERITAGE, Jan. 23, 2017, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=9283&detailType=1&code=0803000000>.

79 The NCHA's 13th Five-Year Plan for the Development of National Cultural Relics, Feb. 21, 2017, <http://www.scio.gov.cn/xwfbh/xwfbfh/wqfbh/39595/40355/xgzc40361/Document/1653914/1653914.htm>.

80 Rules for the Implementation of the Law of the People's Republic of China on the Protection of Cultural Relics, *supra* n. 22.

81 National Archaeological Site Park Creation and Operation Management Guide (Trial), STATE ADMIN. OF CULTURAL HERITAGE, Oct. 10, 2017, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=19011&code=0600000000>.

82 Law of the People's Republic of China on Protection of Cultural Relics, *supra* n. 31, 6th Amend. (2017).

November 2017 Open Guidelines for Cultural Relics Building (Trial) [《文物建筑开放导则（试行）》]⁸³

November 2017 Management Measures for National Cultural Heritage Administration Training Projects [《国家文物局培训项目管理办法》]⁸⁴

December 2017 Decision of the National Cultural Heritage Administration on the Abolition of 12 Regulatory Documents (Manuscript Administration [2017] No. 28) [《文物局关于废止12件规范性文件的决定》]⁸⁵

February 2018 National Cultural Heritage Administration Cultural and Museum Talent Training Base Evaluation Rules (Trial) [《国家文物局文博人才培训基地评估细则（试行）》]⁸⁶

February 2018 Construction Regulations for Ancient Building Repair Project (Trial) [《古建筑修缮项目施工规程（试行）》]⁸⁷

June 2018 Guidelines for the Determination of Immovable Cultural Relics (Trial) [《不可移动文物认定导则（试行）》]⁸⁸

June 2018 Administrative Measures for the Identification and Evaluation of Cultural Relics [《涉案文物鉴定评估管理办法》]⁸⁹

June 2018 Interim Measures for the Exit Management of State-owned Cultural Relics [《国有馆藏文物退出管理暂行办法》]⁹⁰

June 2018 The Implementation Opinion of the Cultural Relics System on the Implementation of the “Who Enforces the Law and Who Popularizes the Law” [《文物系统落实“谁执法谁普法”普法责任制的实施意见》]⁹¹

June 2018 Interim Measures for the Exit management of State-owned Cultural Relics [《国有馆藏文物退出管理暂行办法》]⁹²

October 2018 The General Office of the Central Committee of the Communist Party of China and The General Office of the State Council's Opinions on Strengthening the Protection and Utilization of Cultural Relics [《国家文物局关于废止12件规范性文件的决定（文物政发 2017 28号）》]⁹³

October 2018 The General Office of the Central Committee of the Communist Party of China (CPC) General Office and State Council Several Opinions on Strengthening the Reform of Cultural Relics Protection and Utilization [中共中央办公厅 国务院办公厅印发《关于加强文物保护利用改革的若干意见》].⁹⁴

March 2019 Notice of the Ministry of Justice on the Public Consultation on the Regulations on the Protection of Underwater Cultural Relics (Revised Draft for Review and Approval) [《司法部关于《水下文物保护管理条例（修订草案送审稿）》公开征求意见的通知》]⁹⁵

May 2019 Notice of the National Cultural Heritage Administration of Cultural Heritage on Printing and Distributing the Guidelines for the Operation of Copyright, Trademark and Brand Authorization of Museum Collection Resources (Trial) and Cultural Heritage on Printing and Distributing the Guidelines for the Operation of Copyright, Trademark and Brand

83 Open Guidelines for Cultural Relics Building (Trial), STATE ADMIN. OF CULTURAL HERITAGE, Nov. 6, 2017, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=19013&code=0600000000>.

84 Management Measures for National Cultural Relics Bureau Training Projects, STATE ADMIN. OF CULTURAL HERITAGE, Nov. 13, 2017, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=19012&code=0600000000>.

85 Decision of the National Cultural Heritage Administration on the Abolition of 12 Regulatory Documents (Manuscript Administration [2017] No. 28), STATE ADMIN. OF CULTURAL HERITAGE, Dec. 27, 2017, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=19008&code=0600000000>.

86 National Cultural Heritage Administration Cultural and Museum Talent Training Base Evaluation Rules (Trial), STATE ADMIN. OF CULTURAL HERITAGE, Feb. 11, 2018, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=18709&code=0600000000>.

87 Construction Regulations for Ancient Building Repair Project (Trial), STATE ADMIN. OF CULTURAL HERITAGE, Feb. 11, 2018, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=18710&code=0600000000>.

88 Guidelines for the Determination of Immovable Cultural Relics (Trial), STATE ADMIN. OF CULTURAL HERITAGE, June 27, 2018, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=18711&code=0600000000>.

89 Administrative Measures for the Identification and Evaluation of Cultural Relics, STATE ADMIN. OF CULTURAL HERITAGE, June 20, 2018, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=18291&code=0600000000>.

90 Interim Measures for the Exit Management of State-owned Cultural Relics, STATE ADMIN. OF CULTURAL HERITAGE, June 29, 2018, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=18292&code=0600000000>.

91 The Implementation Opinion of the Cultural Relics System on the Implementation of the “Who Enforces the Law and Who Popularizes the Law”, STATE ADMIN. OF CULTURAL HERITAGE, Dec. 19, 2018, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=19476&detailType=1&code=0803000000>.

92 Interim Measures for the Exit management of State-owned Cultural Relics, STATE ADMIN. OF CULTURAL HERITAGE, June 29, 2018, <http://gl.sach.gov.cn/#/GovernmentInfoPublic/government-info-public-detail?id=18292>.

93 The General Office of the Central Committee of the Communist Party of China and The General Office of the State Council's Opinions on Strengthening the Protection and Utilization of Cultural Relics, XINHUA (Oct. 8, 2018) http://www.xinhuanet.com/politics/2018-10/08/c_1123530260.htm.

94 The General Office of the Central Committee of the Communist Party of China (CPC) General Office and State Council Several Opinions on Strengthening the Reform of Cultural Relics Protection and Utilization, Oct. 8, 2018, http://www.gov.cn/zhengce/2018-10/08/content_5328558.htm.

95 Notice of the Ministry of Justice on the Public Consultation on the Regulations on the Protection of Underwater Cultural Relics (Revised Draft for Review and Approval), Mar. 19, 2019, http://www.gov.cn/xinwen/2019-03/19/content_5375083.htm.



Lightning over the Potala Palace in Lhasa, Tibet, Author: 李国强, 11 August 2011, Creative Commons Attribution-Share Alike 3.0 Unported license.

Authorization of Museum Collection Resources (Trial) [《国家文物局关于印发《博物馆馆藏资源著作权、商标权和品牌授权操作指引（试行）》的通知》]⁹⁶

C. Timeline of Criminal Laws and Civil Penalties

The Criminal Code of the People's Republic of China has played a vital role in combating crimes against cultural heritage. When first enacted in 1979, the Criminal Code contained two articles that regulated criminal offences against cultural heritage.⁹⁷ According to Article 173, whoever, in violation of the laws and regulations on protection of cultural relics, secretly transports precious cultural relics for export, shall be sentenced to fixed-term imprisonment of not less than three years and not more than ten years, and may concurrently be sentenced to a fine; if the circumstances are serious, the offender shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment, and may concurrently be sentenced to confiscation of property.⁹⁸ Additionally, in accordance with Article 174, those who intentionally damage precious cultural relics, historic sites or scenic spots protected by the state shall be sentenced to fixed-term imprisonment of not more than seven years or criminal detention.⁹⁹

Since the 1980s, China has entered a transitional period, with the weakening of state control and crimes, including crimes against cultural heritage, increased rapidly. Under these historic circumstances, the NPC passed a bill substantively amending the Criminal Code on March 14, 1997. The Amended Criminal Code of 1997 has devoted an

⁹⁶ Notice of the National Cultural Heritage Administration on Printing and Distributing the Guidelines for the Operation of Copyright, Trademark and Brand Authorization of Museum Collection Resources (Trial) and Cultural Heritage on Printing and Distributing the Guidelines for the Operation of Copyright, Trademark and Brand Authorization of Museum Collection Resources (Trial), State Admin. of Cultural Heritage, <http://gl.sach.gov.cn/#/IndustrySupervisionManagement/punish-report?detailType=1&id=19831&code=0600000000>.

⁹⁷ Huo, *supra* n. 3, at 7.

⁹⁸ Criminal Law of the People's Republic of China, adopted at the 2nd Sess. of the 5th Nat'l People's Cong. on July 1, 1979, promulgated by Order No. 5 of the Chairman of the Standing Comm. of the National People's Cong. July 6, 1979, effective Jan. 1, 1980.

⁹⁹ *Id.*

entire section (i.e. Section Four ‘Crimes of obstructing cultural and historic objects control’ under Chapter Six ‘Crimes of disturbing the administration of public administration’) to regulating the crimes against cultural heritage. Compared with the Code of 1979, the Amended Criminal Code of 1997 has expanded the criminal offences against cultural heritage, and increased the criminal penalties for cultural property related crimes.

Specifically, the Section of ‘Crimes of Obstructing Cultural and Historic Objects Control’ includes six articles which spell out eight categories of crimes against cultural heritage as follows: (1) intentionally damaging or destroying valuable cultural objects (Article 324(1)); (2) intentionally damaging or destroying places of historical and cultural interest (Article 324(2)); (3) negligently damaging or destroying valuable cultural objects (Article 324(3)); (4) selling or presenting as a gift to a foreigner any valuable cultural object whose export is banned (Article 325); (5) selling for profit the cultural object of which the sale or purchase is banned by the State (Article 326); (6) selling or presenting as a gift by a state-owned museum, library or other institution any cultural object in its collection, which is under State protection, to any non-State-owned institution or individual (Article 327); (7) illegally excavating or robbing ancient cultural sites or ancient tombs (Article 328(1)); and (8) illegally excavating or robbing fossils of ancient human beings or vertebrate animals which are protected by the State (Article 328 (2)).¹⁰⁰ Under the Amended Criminal Code of 1997, the actual criminal penalties imposed on the offences against cultural heritage include fines, confiscation of property, and fixed term imprisonment up to life imprisonment, and in exceptionally serious cases, even death sentences. Moreover, under Article 151, the smuggling of export-prohibited valuable cultural objects is a serious criminal offence, punishable by a fixed term imprisonment of not less than five years and the perpetrator shall also be fined.¹⁰¹ The theft of valuable cultural objects under Article 264 is an even more serious crime, punishable up to life imprisonment or death.¹⁰² The imposition of harsher penalties, including the death penalty, to the perpetrators of these crimes reflects the will of the Chinese government to prevent the proliferation of crimes against cultural heritage.

The Amended Criminal Code of 1997, notwithstanding its progress and its significantly stronger protection of culture property, has aroused hot debate and criticism. This comes mainly from the international community, and stems from the view that the number of crimes punishable by death under the Amended Criminal Code of 1997 is too many, particularly given that most of these crimes are commercial crimes. With this background, after many years of discussion and preparation, the SCNPC passed Amendment VIII to the Criminal Code on February 25, 2011, which has reduced the number of capital crimes from 68 to 55.¹⁰³ After this amendment, most types of commercial crimes, including all crimes against cultural objects, have been removed from the class of death penalty offenses. Hence, adding Amendment VIII to the Criminal Code of 2011 has “considerably softened the penalties imposed on cultural heritage related crimes”.¹⁰⁴

D. Timeline of Conventions and International Treaties with the United States and Europe

The Chinese government has attached great importance to combating the crime of theft and smuggling of cultural relics, and actively explores long-term mechanisms to ensure the security of cultural relics. It has always implemented relevant international conventions, participated in multilateral and bilateral international cooperation, and signed anti-theft and illegal activities agreements. Bilateral agreements on the entry and exit of cultural relics, through the joint efforts of the international community, effectively protects human cultural heritage. Since 1998, China has initiated many communications and consultations with the US government on the signing of bilateral agreements restricting the import of Chinese cultural relics. On January 14, 2009, Zhou Wenzhong, Ambassador of the People’s Republic of China to the United States of America, and a representative from the US Department of State signed the Memorandum of Understanding between the United States and People’s Republic of China on Import Restrictions Imposed on Certain Archaeological Material from China (“MOU”). This MOU was undertaken by China and the United States as signatory countries to the 1970 UNESCO Convention on Methods to Prohibit and Prevent the Illegal Import and Export of Cultural Property and the Illegal Transfer of Their Ownership. According to Baohua Dong, Vice Director of the National Cultural Heritage Administration, “the signing of the memorandum of understanding is not only an important measure to prevent the illegal inflow of Chinese cultural relics into the United States, but also a concrete action to promote the exchange and cooperation of the international community in the field of cultural heritage. We will further strengthen cooperation with other major destination countries of illegal cultural relics and promote the signing

¹⁰⁰ Amendment to Chinese Criminal Code, promulgated Mar. 14, 1997, effective Oct. 1, 1997.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Eighth Amendment to the Criminal Law of the People’s Republic of China, issued Nat’l People’s Cong. Standing Comm. Feb. 25, 2011, effective May 1, 2011, <https://www.cecc.gov/resources/legal-provisions/eighth-amendment-to-the-criminal-law-of-the-peoples-republic-of-china>. (Chinese and English Text).

¹⁰⁴ Huo, *supra* n. 3, at 9.

The bodhisattva Avalokiteshvara (Guanyin), 1100-1200. Song dynasty (960-1279). Asian Art Museum, The Avery Brundage Collection, B60S24+. Photograph © Asian Art Museum of San Francisco.



of related agreements.”¹⁰⁵ The effective period, when the MOU was signed, was for five years, but the MOU was extended for another 5 years in January 2014, and extended again for another 5 years in January 2019.

China also signed a number of bilateral treaties on the protection of cultural heritage with countries in Europe. For example, in August 2013, China and Switzerland entered into the Agreement between the Federal Council of the Swiss Confederation and the Government of the People’s Republic of China on illicit Import and Export and Repatriation of Cultural Property.

The detailed timeline of the most important culture relics protection treaties with the United States and Europe is listed below:

January 2009 Memorandum of Understanding between the United States and People’s Republic of China on Import Restrictions Imposed on Certain Archaeological Material from China

August 2013 Agreement between the Federal Council of the Swiss Confederation and the Government of the People’s Republic of China on illicit Import and Export and Repatriation of Cultural Property

January 2014 Extension and modification of the Memorandum of Understanding between the United States of America and China on Import Restrictions Imposed on Certain Archaeological Material from China

January 2019 Extension and modification of the Memorandum of Understanding between the United States of America and China on Import Restrictions Imposed on Certain Archaeological Material from China

E. Timeline of Significant Agreements With Other Foreign Nations Regarding Cultural Property

In addition to the United States and Europe, China also entered into treaties on cultural protection with other foreign countries. The detailed timeline of the most important culture relics protection treaties with other foreign countries is listed below:

June 2006 Memorandum of Understanding between the Ministry of Information, Culture, Tourism and Youth of the Islamic Republic of Afghanistan and the Ministry of Information, Culture, Tourism and Youth of the Islamic Republic of Afghanistan¹⁰⁶

September 2007 Memorandum of Understanding between the State Administration of Cultural Heritage of the People’s Republic of China and the Tourism Administration of Cultural Heritage and Handicraft Industry of the Islamic Republic of Iran on the Protection of Cultural Heritage¹⁰⁷

January 2008 Agreement between the State Administration of Cultural Heritage of the People’s Republic of China and the Ministry of National Heritage of the Democratic Socialist Republic of Sri Lanka on Cooperation to Protect Cultural Heritage¹⁰⁸

October 2009 Memorandum of Understanding between the State Administration of Cultural Heritage of the People’s Republic of China and the Australian Ministry of Environment, Water, Heritage and Arts on the protection of cultural relics¹⁰⁹

December 2010 Bilateral Agreement between the Government of the Arab Republic of Egypt and the Government of the People’s Republic of China for the Protection and Restitution of Stolen Cultural Property transferred illicitly from their Country of Origin (Arabic and English, UNESCO database)

2014 “By the end of February 2014, China has signed bilateral agreements on the protection of cultural property from theft, illegal excavation and illicit traffic with 28 countries. There are two points, inter alia, which are worthy of special notice: First, these countries include not only source nations, such as Greece and Peru, but also market nations, such as Switzerland and Australia.”¹¹⁰

¹⁰⁵ National Cultural Heritage Administration: China and the United States sign memorandum of understanding on cultural relics protection, http://www.gov.cn/gzdt/2009-01/17/content_1208128.htm.

¹⁰⁶ <http://policy.mofcom.gov.cn/pact/pactContent.shtml?id=1052>.

¹⁰⁷ <http://policy.mofcom.gov.cn/pact/pactContent.shtml?id=1850>.

¹⁰⁸ <http://policy.mofcom.gov.cn/pact/pactContent.shtml?id=1751>.

¹⁰⁹ <http://policy.mofcom.gov.cn/pact/pactContent.shtml?id=2313>.

¹¹⁰ Huo, *supra* n. 3, at 10.

F. National Laws on the Cultural Property of Other Nations

Currently, the Chinese domestic law does not have specific provisions governing the protection of cultural property of other nations. However, as discussed in more detail above, China has acceded to UNESCO and other international conventions, and has signed bilateral agreements with Peru, India, Italy, the Philippines, Greece, Chile, Cyprus, the United States, France, Australia, Switzerland and other countries to prevent the theft and illegal entry and exit of cultural relics, which governs the cultural property of other nations in China. The major international conventions include the 1970 Convention and the 1995 Convention. Other nations whose cultural property was stolen may seek legal routes for the return of its cultural property. According to the spirit of international conventions and bilateral agreements, since 2008, the NCHA has published information on more than 6,900 stolen cultural relics attributed to China by Ecuador, Iraq, and Peru.¹¹¹ The NCHA additionally released a database of stolen foreign cultural relics on April 20, 2018.¹¹² This database contains information on cultural relics stolen from other countries and is updated in real time based on reports from these countries.¹¹³

G. Exemptions for Scientific and Educational Use

Currently, the Chinese domestic law does not provide an exemption to its excavation prohibitions for scientific and educational use. However, historically, the Republic of China, in its Rules Relating to the Participation of Foreign Academic Organizations or Private Individuals in the Excavations of Relics, has permitted such exemption by providing that “[a]cademic institutions directly under the central, provincial or municipal authorities (hereafter known briefly as academic institutions), when found necessary in the excavation of relics, may request the Central Relics Custodian Commission to authorize the participation and assistance of foreign academic organizations or specialized personnel in the work; provided, however, that the number of those participants does not exceed the majority of the numbers of the Chinese academic institution”.¹¹⁴ The rule also provided detailed procedures for academic institutions to apply for such exemption.¹¹⁵

II. CULTURAL PROPERTY TERMS

A. What is Cultural Property?

1. Presently, is what constitutes “cultural property” subject to domestic laws?

“Cultural property” is property a State specifically designates as being of importance for archaeology, prehistory, history, literature, art or science.¹¹⁶ It includes movable or immovable property of great importance to cultural heritage, irrespective of origin or ownership. It also includes the “intangible” practices, representations, and expressions that communities recognize as part of their cultural heritage. In China, protected cultural relics include, but are not limited to, sites of ancient culture, valuable works of art, and important documents from various historical periods.

2. Have there been changes over time in what types of objects are considered cultural property under the law or changes in what types of objects are considered state-owned or an inalienable part of the national heritage?

As China is a party to the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention of 1954, China also adopted its definition of cultural property. The 1954 Convention with Regulations for the Execution of the Convention of 1954 defines cultural property broadly to “cover, irrespective of origin or ownership, movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art, or history, whether religious or secular, buildings whose main and effective purpose is to preserve or exhibit moveable cultural property and centers containing a large amount of

111 *National Cultural Heritage Administration Officially Releases Database of Stolen Foreign Cultural Relics*, CHINESE OFFICIAL GOV'T (April 20, 2018), http://www.gov.cn/xinwen/2018-04/20/content_5284618.htm.

112 *Id.* Further information about the database can be found at National Cultural Heritage Administration's website, http://www.ncha.gov.cn/art/2018/4/8/art_1963_148304.html, and <http://www.sach.gov.cn/col/col2069/index.html>.

113 *Id.*

114 Rules Relating to the Participation of Foreign Academic Organizations or Private Individuals in the Excavations of Relics, art. 1, promulgated by the Exec. Yuan Mar. 16, 1935.

115 *Id.* art. 2.

116 In many conventions and laws, as in many books and papers, the term ‘cultural property’ is used. In the context of Chinese law, the terms “cultural objects” and “cultural relics” are used more often. Strictly speaking, these terms do not all mean the same thing. However, it is beyond scope of the article to provide a theoretic discussion of these terms. They are used more or less alternatively in this article.



Honghe Hani Rice Terraces in Yunnan Province, China, Jialiang Gao, www.peace-on-earth.org, March 2003, Creative Commons Attribution-Share Alike 2.5 Generic license.

cultural property, to be known as ‘centers containing monuments.’”¹¹⁷ Article 15 of the Convention further explains that “as far as is consistent with the interests of security, personnel engaged in the protection of cultural property shall, in the interests of such property, be respected, and if they fall into the hands of the opposing Party, shall be allowed to continue to carry out their duties whenever the cultural property for which they are responsible has also fallen into the hands of the opposing Party.”¹¹⁸ The Convention was published on May 14, 1954 and China became a signatory to the Convention on the same date. [Ed note: China acceded to the Convention on May 1, 2000.]

As China is a party to the 1970 Convention, China also adopted the Convention’s definition of culture property when it joined the Convention in 1989. Article 1 of the 1970 Convention defines cultural property as “property which, on religious or secular grounds, is specifically designated by each state as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories: rare collections and specimens of fauna, property relating to history, products of archaeological excavations, elements of artistic or historical monuments, antiquities more than one hundred years old, objects of ethnological interest, property of artistic interest, rare manuscripts, postage, archives, and articles of furniture more than one hundred years old and old musical instruments.”¹¹⁹ The Convention was published on November 14, 1970 and China deposited its instrument of acceptance to the Convention on November 28, 1989.

The Law of the People’s Republic of China on Protection of Cultural Relics was first published on November 19, 1982. It has since been amended, most recently for the sixth time in accordance with the Decision on Amending the Law of the People’s Republic of China on Protection of Cultural Relics adopted at the 30th Meeting of the Standing Committee of the Twelfth National People’s Congress on November 4, 2017. The Law of the People’s Republic of China on Protection of Cultural Relics defines “culture relics” to include: “(1) sites of ancient culture, ancient tombs, ancient architectural

¹¹⁷ Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 Convention, art. 1, May 14, 1954.

¹¹⁸ *Id.*, art. 15.

¹¹⁹ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, art. 1, Nov. 14, 1970.

structures, cave temples, stone carving and murals that are of historical, artistic or scientific value; (2) important modern and contemporary historical sites, material objects and typical buildings that are related to major historical events, revolutionary movements or famous personalities and that are highly memorable or are of great significance for education or for the preservation of historical data; (3) valuable works of art and handicraft articles dating from various historical periods, (4) important documents dating from various historical periods, and manuscripts, books and materials, etc. that are of historical, artistic or scientific value; and (5) typical materials reflecting the social system, social production or the life of various nationalities in different historical periods.”¹²⁰ Fossils of ancient vertebrates and ancient human fossils of scientific value are also protected by the state as cultural relics.¹²¹

In addition to the protection of tangible culture objects, China also protects its intangible culture heritage under its own domestic law as well as international treaties. *The Convention for the Safeguarding of the Intangible Cultural Heritage* states that “the ‘intangible cultural heritage’ means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.”¹²² Further, this “intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.”¹²³ The Convention was published on October 17, 2003 and China deposited its instrument of ratification to the Convention on February 12, 2004. Domestically, China published the Opinion of the General Office of the State Council on Strengthening the Protection of Intangible Cultural Heritage in 2005. These regulations strengthened the necessity and importance of protecting the intangible culture heritage, establishing the goals and guidelines for the protection of intangible culture heritage, and called for the establishment of a list system for the protection of intangible culture heritage, as well as for the establishment of an efficient mechanism between different levels of government and agencies for the protection of intangible culture heritage.¹²⁴ China further adopted the Law of the People’s Republic of China on Intangible Cultural Heritage in 2011, adopting its own definition of intangible culture heritage, further strengthening the protection of intangible culture heritage.¹²⁵

B. Are there classifications or categories of cultural property under the laws? (For example: tangible, intangible, state property, private property, real estate property, movable property, archaeological, Paleolithic, pre-colonial, colonial, church-owned/religious, etc.)

China classifies cultural property into two main categories: immovable culture relics and movable cultural relics.¹²⁶ Immovable Cultural Relics includes “sites of ancient culture, ancient tombs, ancient architectural structures, cave temples, stone carvings and murals as well as important modern and contemporary historic sites and typical buildings” that can be designated, in accordance with their “historical, artistic and scientific value”, as “major sites to be protected at national level”, “major sites to be protected at provincial level”, or “major sites to be protected at county level.”¹²⁷ China adopted certain definitions set forth in the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage which related to immovable culture relics. Under Article 1 of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, “monuments” is defined as “architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science”; “groups of buildings” is defined as “groups of separate or connected buildings which, because of their architecture, their homogeneity, or their place in the landscape, are of outstanding universal value from the point of view of history, art or science”; and “sites” is defined as “works of man or the combined works of

¹²⁰ Law of the People’s Republic of China on Protection of Cultural Relics, art. 2 (2007). The Proposed Draft Amendment Law of the People’s Republic of China on Protection of Cultural Relics that was published in January 2017 proposes to expand the definition of culture relics, to amend the Article 2(2) from “important modern and contemporary historical sites, material objects and typical buildings that are related to major historical events, revolutionary movements or famous personalities and that are highly memorable or are of great significance for education or for the preservation of historical data” to “important modern and contemporary historical sites, material objects and typical buildings that are related to major historical time period, major historical events or famous personalities and that are highly memorable or are of great significance for education or for the preservation of historical data”, and to amend Article 2(4) from “important documents dating from various historical periods, and manuscripts, books and materials, etc. that are of historical, artistic or scientific value” to “important documents dating from various historical periods, and manuscripts, books and materials, video and audio recording materials, etc. that are of historical, artistic or scientific value”. However, those proposed changes were not adopted in the final published Culture Relics Protection Law (2017).

¹²¹ Law of the People’s Republic of China on Protection of Cultural Relics, art. 2 (2007).

¹²² Convention for the Safeguarding of the Intangible Cultural Heritage, Oct. 17, 2003 (UNESCO).

¹²³ *Id.*, art. 2.

¹²⁴ *The General Office of the State Council on Strengthening the Protection of Intangible Cultural Heritage*, OFFICIAL CHINESE GOV’T (2005), www.gov.cn/gongbao/content/2005/content_63227.htm.

¹²⁵ The Law of the People’s Republic of China on Intangible Cultural Heritage (2011).

¹²⁶ The Law of the People’s Republic of China on Protection of Cultural Relics, art. 3.

¹²⁷ *Id.*, art. 3(1).

nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.”¹²⁸

Movable Cultural Relics includes any “important material objects, works of art, documents, manuscripts, books, materials, and typical material objects”, and they are classified into two main categories, valuable cultural relics and ordinary cultural relics. *Id.*, Article 3(2). Under Article 3(2) of the 2002 Amendment of the Law of the People’s Republic of China on Protection of Cultural Relics, valuable cultural relics are further broken down into grade-one, grade-two, and grade-three cultural objects. In an administrative order issued by the Ministry of Culture, more specific guidance is provided to classify these grades, under which grade-one cultural objects are defined as “especially important for historic, artistic, and scientific values”, grade-two cultural objects are defined as those cultural objects that have “important culture value”, and grade-three cultural objects are “relatively important” to China’s cultural heritage. Ordinary cultural relics is defined as those that only have “certain historic, artistic, and scientific value”.

China also distinguishes tangible from intangible culture property. Tangible culture properties include both the movable and immovable culture property discussed above. Under the Law of the People’s Republic of China on Intangible Cultural Heritage, intangible cultural heritage is defined as “various traditional cultural manifestations which are handed down by the people of all ethnicities from generation to generation and regarded as a constituent part of their cultural heritage, and physical objects and premises related to the traditional cultural manifestations”, including: (1) Traditional oral literature and the language as a carrier thereof; (2) Traditional fine arts, calligraphy, music, dance, drama, folk art and acrobatics; (3) Traditional artistry, medicine and calendar; (4) Traditional rituals, festivals and other folk customs; (5) Traditional sports and entertainment; and (6) Other intangible cultural heritage. The relevant provisions of the Law of the People’s Republic of China on the Protection of Cultural Relics shall apply to the physical objects and premises that are a constituent part of the intangible cultural heritage and fall under the category of cultural relics.¹²⁹ The Law of the People’s Republic of China on Intangible Cultural Heritage applies with regard to the protection of any intangible culture property, but to the extent any physical objects and premises that are a constituent part of the intangible cultural heritage and fall under the category of cultural relics, the Law of the People’s Republic of China on the Protection of Cultural Relics applies with regard to those physical objects and premises.¹³⁰ China further distinguishes state cultural property and private cultural property. Certain properties can only be owned by the state and others may be privately owned, as discussed in more detail below.

China does not recognize church-owned or religious cultural property as separate categories, but church-owned or religious culture property are protected if it falls within the definition of cultural property under the Chinese culture heritage laws and regulations.

C. Does the law clearly vest title to cultural property to the state from a certain date?

Yes. The Culture Relics Protection Law of 1982 clearly vests title of certain cultural property to the state. Specifically, Article 5 of Cultural Relics Protection Law expressly provides that “[a]ll culture relics remaining underground or in the inland waters or territorial seas within the boundaries of the People’s Republic of China are owned by the State.”¹³¹ Therefore, the title of all cultural relics remaining underground or in the inland waters or territorial seas within the boundaries of the People’s Republic of China are owned by the State, whether discovered by an individual or institution.

With regard to the ownership of immovable cultural relics, Article 5 of Culture Relics Protection Law further provides that “[s]ites of ancient culture, ancient tombs and cave temples are owned by the State. Such immovable culture relics as memorial buildings, ancient architectural structures, stone carvings, murals and typical architectural structures of the modern and contemporary times, designed for protection by the State, except where otherwise provided for by regulations of the State, are owned by the State. The ownership of State-owned immovable cultural relics shall remain unchanged when ownership or the right to use of the land to which such relics are attached changes.”¹³²

To provide more effective protection, cultural heritage sites protected by the Culture Relics Protection Law are classified under three different levels according to their historical and cultural value. This can be either protection on the county level, provincial level, or national level. Newly discovered cultural heritage sites are to be reported to the local cultural heritage department or the local museum, where they are classified or only registered. However, there are hardly any penalties for not reporting heritage sites. In case of classification, they are usually placed under a certain level of protection while sites that are only registered are usually not provided with special protection measures. The decision about the grade of the historical and cultural value of sites lies within the responsibility of the authorities at

¹²⁸ UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 21, 1972, (rectified by China in 1985).

¹²⁹ Law of the People’s Republic of China on Intangible Cultural Heritage, art. 2.

¹³⁰ *Id.*

¹³¹ *Id.* art. 5.

¹³² *Id.*



China, Xumifushou Temple, Chengde, Hebei Province Date: 1700-1800
Historical Period: Qing dynasty (1644-1911) Object Name: Thangka Materials: Colors on cotton Dimensions: H. 56 3/4 in x W. 27 3/4 in, H. 144.1 cm x W. 75 cm (image); H. 76 in x W. 37 1/2 in, H. 193 cm x W. 90.5cm (overall)
Credit Line: Transfer from the Fine Arts Museums of San Francisco, Gift of Katherine Ball

the appropriate levels.¹³³ The relevant authorities are further obliged to set up sufficient specialized organs and staff for the protection of heritage sites within their region and establish and release records of all classified heritage sites along with the intended protective measures.

With regard to the ownership of movable cultural relics, Article 5 of the Cultural Relics Protection Law further provides that “[t]he following movable cultural relics are owned by the State: (1) cultural relics unearthed within the territories of the People’s Republic of China, except where otherwise provided for by regulations of the State; (2) cultural relics collected and preserved by institutions for the collection of State-owned cultural relics and by other State organs, armed forces, State-owned enterprises, public institutions, etc.; (3) cultural relics collected and purchased by the State; (4) cultural relics donated to the State by citizens, legal persons and other organizations; and (5) other cultural relics owned by the State as provided by law. Ownership of movable cultural relics owned by the State shall remain unchanged when institutions for their preservation or collection cease to exist or are replaced. Ownership of the State-owned cultural relics shall be protected by laws and shall brook no infringement.”¹³⁴

The current Law of the People’s Republic of China on Protection of Cultural Relics additionally protects the private ownership of cultural relics. Article 6 of the Law of the People’s Republic of China on Protection of Cultural Relics provides that “[o]wnership of memorial buildings, ancient architectural structures, culture relics handed down from ancestors and other culture relics obtained in accordance with laws, which belong to collectives or individuals, shall be protected by laws.”¹³⁵

D. Is the export of Cultural Property prohibited, permitted, or typical?

Whether cultural property is prohibited, restricted or permitted for export depends on the type of cultural property in question. As a general principal, precious cultural relics or other cultural relics whose removal would be detrimental to the national honour, hinder national unity, and have politically adverse effects are forbidden to leave the country, and general cultural relics are restricted from leaving the country. Precious cultural relics refer to the first, second and third-level cultural relics in the National Museums. Trade of exported cultural relics, in addition to the identification and issuance of permit by the national designated port identification agencies, should also be submitted to the Ministry of Culture for approval documents. The export of cultural relics, including the removal of cultural relics by individuals, must be reported to customs. The Cultural Relics Exit Permit and the Cultural Relics Export License are important documents for China to control the export of cultural relics and an important basis for customs inspection and release.

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property states that the “import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the State Parties thereto, shall be illicit.”¹³⁶ Article 6 of the Convention states that “the State Parties to the Convention undertake to introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations.”¹³⁷ The Convention was published on November 14, 1970 and China deposited its instrument of acceptance to the Convention on November 28, 1989.

The Memorandum of Understanding Between the Government of the United States of American and the Government of the People’s Republic of China Concerning the Imposition of Import Restrictions on Categories of Archaeological Material from the Paleolithic Period through the Tang Dynasty and Monumental Sculpture and Wall Art at least 250 Years Old states that the “U.S. Government, in accordance with its legislation entitled the Convention on Cultural Property Implementation Act, shall restrict the importation into the U.S. of archaeological material originating in China and representing China’s cultural heritage.”¹³⁸ Article 2 of the Memorandum states that the Chinese Government “shall take measures to improve the effectiveness of its customs officers, in order to: (1) stop the illicit exportation of cultural property at borders and ports; and (2) to recognize Chinese archaeological material and its value to the heritage. Further, the Chinese Government shall continue to license the sale and export of certain antiquities as

¹³³ *Id.* art. 13.

¹³⁴ Law of the People’s Republic of China on Protection of Cultural Relics, art. 5 (2007).

¹³⁵ *Id.*, art. 6.

¹³⁶ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, art. 2, Nov. 14, 1970.

¹³⁷ *Id.*, art. 6.

¹³⁸ Memorandum of Understanding between the Gov’t of the U.S. and the People’s Republic of China Concerning the Imposition of Import Restrictions on Categories of Archaeological Material from the Paleolithic Period through the Tang Dynasty and Monumental Sculpture and Wall Art At Least 250 Years Old, Jan. 14, 2009, T.I.A.S. 09-114.



Autumn Moon Over the Calm Lake. Xihu, one of the ten famous scenes, calm lake and autumn moon. West Lake in Hangzhou, Zhejiang Province, China, Author: Jeff chenqinyi, 1 August 2013, Creative Commons Attribution-Share Alike 3.0 Unported license.

provided by law and will explore ways to make more of these objects available licitly.”¹³⁹

1. What is the permitting System (or other mechanism) for export of cultural property, if applicable?

The import and export of cultural property from China is subject to licensing and regulation. There is a system for obtaining permits for the export of cultural property. In China, the State Council issues an exit permit for cultural relics that may be taken out of the country. Further, the National Cultural Administration (NCHA) must grant an export license for foreign buyers seeking to export an item purchased within the country.

The Law of the People’s Republic of China on Protection of Cultural Relics provides that “for the cultural relics that may be taken out of the country after examination and verification, the administrative department in charge of cultural relics under the State Council shall issue an exit permit, and they shall be shipped out of the country at the port designated by the said administrative department.”¹⁴⁰ It further provides that “cultural relics to be taken out of the country for exhibition shall be examined, verified and registered by the examination and verification authority for entry and exit of cultural relics” and that “the administrative department in charge of cultural relics under the State Council shall issue an exit permit for these cultural relics and the Customs shall let them leave the country on the strength of the permit.”¹⁴¹

The Administrative Rules for Examination and Approval of Entry and Exit of Cultural Relics (2007) provide further detailed regulations on the identification and permit requirement for the export of culture relics. Under the Administrative Rules for Examination and Approval of Entry and Exit of Cultural Relics (2007), the NCHA is responsible for the examination and management of cultural relics in and out of the country, and the designated Cultural Relics Entry and Exit Auditing Agency undertakes the inspection of cultural relics in and out of the country.¹⁴² The Cultural Relics Entry and Exit

¹³⁹ *Id.*, art. 2.

¹⁴⁰ Law of the People’s Republic of China on Protection of Cultural Relics, art. 61 (2007).

¹⁴¹ *Id.*, art. 62–63.

¹⁴² Administrative Rules for Examination and Approval of Entry and Exit of Cultural Relics , art. 2 (2007).



Temple of Heaven, Beijing, China, photo by Diego Delso, 19 February 2006, license CC BY-SA.

Auditing Agency is jointly organized by the NCHA and the provincial people's government.¹⁴³ The State Administration of Cultural Heritage shall, in accordance with the needs of the entry and exit of cultural relics, designate the cultural relics entry and exit auditing institutions to undertake the examination and approval of cultural relics entry and exit, use the cultural relics exit identification and cultural relics temporary entry identification, and issue cultural relics exit permits for cultural relics permitted to leave the country.¹⁴⁴

The Cultural Relics Entry and Exit Auditing Agency is a cultural relics administrative law enforcement agency. It exercises its functions and powers independently according to law, reports to the NCHA, and accepts the business guidance of the NCHA.

For cultural relics to leave the country, the exit of the national cultural relics appraisal department approved by the State Council must be carried out for exit identification. Cultural relics that have been approved for export shall be printed by the appraisal agency. The "A" prefix indicates that the cultural relics belong to the cultural relics of the cultural relics business unit; the "B" prefix is the private carrying cultural relics; the "C" prefix is the approved cultural relics. The number following the letter is the issuing record number.

Cultural relics are designated to go through customs clearance and inspection procedures at the following four ports in: Beijing, Tianjin, Shanghai and Guangzhou. The relevant units shall declare the export of cultural relics subject to the approval of the cultural administrative department. At the time of customs declaration, the approval certificate of the cultural administrative department or the Cultural Relics Export License or the Cultural Relics Export Certificate issued by the NCHA, shall be submitted to Customs. For the export of cultural relics purchased by residents of other countries in China, the Customs shall examine and release the "Invoice for the Export of Cultural Relics" issued by the cultural relics store with the "Foreign Exchange Purchase" seal.

¹⁴³ *Id.*, art. 3.

¹⁴⁴ *Id.*, art. 5.

2. What are the purposes for the export of such property (sale, exhibition, change)

The Chinese government imposes export restrictions to strengthen the protection of China's cultural heritage and prevent the loss of precious cultural relics. Cultural relics may be exported for various reasons, such as sale, exhibition or change, depending on their approval in their export identifications.

3. If not state-owned, is cultural property subject to export restrictions?

Yes, Article 2 of the Administrative Rules for Examination and Approval of Entry and Exit of Cultural Relics (2007) provides that all of the following cultural relics must be identified, reviewed and approved for exports: (1) all kinds of artworks, arts and crafts before 1949 (inclusive); (2) manuscripts, literature materials and books and materials before 1949 (inclusive); (3) the physical objects related to the social systems, social production and social life of all ethnic groups before 1949 (inclusive); (4) representative objects related to major events or famous figures after 1949; (5) representative objects reflecting the production activities, customs, culture, art and religious beliefs of various ethnic groups after 1949; (6) the State Administration of Cultural Heritage announces the works of the late modern famous painters and crafts artists who are restricted from leaving the country; and (7) ancient fossils, ancient human fossils, and Quaternary vertebrate fossils associated with human activities. In other words, under the current law, all ceramics, gold and silverware, bronzes and other metalware, jade, lacquerware, glassware, carvings, sculptures, furniture made by Chinese and foreign countries before the founding of the People's Republic of China in 1949, paintings and calligraphy, rubbings, books, literature, weaving, stationery, stamps, currency, utensils, arts and crafts, etc. after 1949, the works of famous late and modern famous painters and craftsmen in China, and vertebrates and ancient human fossils must be identified for cultural exit, regardless of whether state-owned or privately owned.

The standards for the exit of cultural relics are regularly revised and published by the NCHA. In accordance with the Cultural Relics Exit Review Criteria approved at the 4th Administrative Meeting of the NCHA in 2007, 1949 was set as the main standard line.¹⁴⁵ Under this general principal, all cultural relics with certain historical, artistic and scientific value produced or made before 1949 (including 1949) are prohibited from leaving the country.¹⁴⁶ This includes all cultural relics produced before 1911 (including 1911), which are forbidden to leave the country.¹⁴⁷ The main standard line for ethnic cultural relics is 1966. Representative ethnic cultural relics produced before 1966 (including 1966) are prohibited from leaving the country.¹⁴⁸ Cultural relics whose removal would be detrimental to the interests of the state or the nation, or that may cause adverse social influences, are prohibited from leaving the country regardless of their age.¹⁴⁹ Cultural relics that are not included in the scope of the Cultural Relics Exit Review Criteria, such as those deemed to have significant historical, artistic or scientific value after review of the entry and exit inspection bodies of cultural relics, shall be prohibited from leaving the country.¹⁵⁰ With these general principals, the Cultural Relics Exit Review Criteria then set forth detailed criteria in determining whether certain culture relics shall be permitted for export or not. The NCHA issued the Notice on the Issuance of the Limits of Exit Identification for the Works of the Late Famous Writers and Painters of the Year 1949 and the Famous Writers and Painters of the Year 1795-1949 (2001), Notice on the Issuance of the "Exclusion of the Appraisal Standards of the Late Famous Writers and Painters after 1949 (Second Batch)" (2013), and the Identification Criteria for Limited Export for Words of Famous Writers and Painters After 1949 (Second Batch) (2013), which further set forth detailed restrictions on the export of works of famous painters.¹⁵¹

A letter written on behalf of the International Association of Professional Numismatists ("IAPN"), a nonprofit organization, to the U.S. Department of State Cultural Property Advisory Committee states that "any foreign buyer wishing to organize legal export of an item bought inside the PRC is told that an application to the Cultural Relics Bureau is required in order to obtain an official export license. If an export license is obtained, it must be presented to the PRC Customs, and the original document is retained by the PRC Customs officer at the time of export."¹⁵² The letter further states that "another special feature of the PRC import/export regulations stipulates that Chinese art of any type or period (including Neolithic and ancient art), if it is officially imported and fully declared at the time it is imported into

¹⁴⁵ *Id.*, art. 3.

¹⁴⁶ Administrative Rules for Examination and Approval of Entry and Exit of Cultural Relics, art. 3 (2007).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*, art. 4.

¹⁴⁹ *Id.*, art. 6.

¹⁵⁰ *Id.*, art. 7.

¹⁵¹ Notice on the Issuance of the Limits of Exit Identification for the Works of the Late Famous Writers and Painters of the Year 1949 and the Famous Writers and Painters of the Year 1795-1949 (2001), Notice on the Issuance of the "Exclusion of the Appraisal Standards of the Late Famous Writers and Painters after 1949 (Second Batch)" (2013) and the Identification Criteria for Limited Export for Words of Famous Writer and Painter After 1949 (Second Batch) (2013), <http://www.cguardian.com/pmzn/qtfw/tldg/wwcjxggd/index.shtml>.

¹⁵² Letter on behalf of the International Association of Professional Numismatists ("IAPN") to the Cultural Property Advisory Committee Regarding Proposed Renewal of the MOU with China 9 (Apr. 23, 2013).



A vast alluvial fan blossoms across the desolate landscape between the Kunlun and Altun mountain ranges that form the southern border of the Taklimakan Desert in China's Xinjiang Province. Photo by NASA/GSFC/METI/ERSDAC/JAROS, and U.S./Japan ASTER Science Team, 2 May 2002, public domain.

China, is allowed to be exported within the next six months.”¹⁵³

4. Is there export to any nation of cultural property that is restricted under a US law or MOU under the US Cultural Property Implementation Act?

Under the MOU between the U.S. and China, China prohibited exhibition of cultural relics outside China for longer than a year. At the Meeting of the Cultural Property Advisory Committee to Review Proposal to Extend the MOU between the U.S. and China Concerning the Imposition of Import Restrictions on Categories of Archaeological Material from the Paleolithic Period through the Tang Dynasty on May 14, 2013, the Association of Art Museum Directors released the following statement: “Article 50 of the Regulations for the Implementation of the Law of the People’s Republic of China on Protection of Cultural Relics prohibits the exhibition of cultural relics outside China for longer than one year...U.S. museums are effectively precluded from borrowing Class 1 objects for long-term loans; a long-term loan of a single Class 1 object, for example, would constitute 100% of the exhibition and would thus be prohibited under Chinese law.”¹⁵⁴

Section 302 of the Convention on Cultural Property Implementation Act: An Act to reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes states that “the term archaeological or ethnological material of the State Party means any object of archaeological interest, any object of ethnological interest, or any fragment or part of any object referred to in subparagraph (A) or (B)...No object may be considered to be an object of archaeological interest unless such object is of cultural significance, is at least two hundred and fifty years old, and was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water.”¹⁵⁵ Further, Section 308 of the Act states that “no article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this title, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.”¹⁵⁶ The Act was published on January 12, 1983. However, information on specific U.S.-restricted cultural property that may be exported from China to other nations is not available at the time of writing.

On January 14, 2009, the United States and the People’s Republic of China entered into a Memorandum of Understanding (“MOU”) to protect categories of archaeological material from the Paleolithic Period through the Tang Dynasty. The MOU further protects monumental sculpture and wall art at least 250 years old. On January 8, 2014, the countries extended the agreement for an additional five years. The U.S. action is in response to a request from China made under Article 9 of the 1970 UNESCO Convention of the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The MOU aims to further international exchange of cultural objects for cultural, education, and scientific purposes. Accordingly, China has agreed to promote long-term loans of archaeological objects to museums.¹⁵⁷

The MOU was extended for five years by the two governments in 2014 and for another five years by the two governments on January 14, 2019.

E. Is there legal Recognition of Religious or Other Cultural Property?

Religious or other cultural property are protected under the Chinese law as long as they fall within the scope of protected cultural relics, although they are not recognized as a separate legal category.

F. Is there legal Recognition of Private Ownership of Cultural Property?

The law recognizes private ownership of cultural property. In China, citizens may lawfully inherit or accept cultural relics as gifts, purchase cultural relics from stores, purchase cultural relics from auction houses, or mutually exchange cultural relics owned by individual citizens.

Article 50 of the Cultural Relics Protection Law provides that “citizens, legal persons and other organizations, except institutions for the collection of cultural relics, may collect cultural relics obtained through the following channels:

¹⁵³ *Id.* at 10.

¹⁵⁴ Statement of Stephen J. Knerly, Jr. for Association of Art Museum Directors at the Meeting of the Cultural Advisory Committee to Review Proposal to Extend the Memorandum of Understanding between the Gov’t of the United States of America and the Government of the People’s Republic of China Concerning the Imposition of Import Restrictions on Categories of Archaeological Material from the Paleolithic Period through the Tang Dynasty and Monumental Sculpture and Wall Art at Least 250 Years Old 4, May 14, 2013, <https://culturalpropertynews.org/wp-content/uploads/2017/11/AAMD-CPAC-2013-China-MOU.pdf>.

¹⁵⁵ Convention on Cultural Property Implementation Act, 19 U.S.C. § 2601(2) (1983).

¹⁵⁶ *Id.* § 2607.

¹⁵⁷ Memorandum of Understanding, *supra* n. 7.

(1) lawfully inheriting or accepting as gifts; (2) purchasing from cultural relics stores; (3) purchasing from auction enterprises engaged in auction of cultural relics; (4) mutually exchanging or transferring in accordance with law the cultural relics lawfully owned by individual citizens; or (5) other lawful channels prescribed by the State.”¹⁵⁸ Further, Article 51 states that “no citizens, legal persons or other organizations may purchase or sell the following cultural relics: (1) state-owned cultural relics, except ones with the approval of the State; (2) valuable cultural relics in the collection of the cultural institutions not owned by the State; (3) such of the State-owned irremovable cultural relics as mural, carvings and components of buildings...; or (4) cultural relics not obtained through the channels provided for in Article 50 of this Law.”¹⁵⁹ The ownership of cultural relics of citizens, legal persons and other organizations is protected by the law.¹⁶⁰ Citizens, legal persons and other organizations may further request the administrative department of cultural relics to provide consultation on the identification, restoration and custody of their collection of culture relics.

G. Position on Domestic Trade

1. Are transfers permitted of shop, gallery, auction, or private sales? Are they common?

The sale of cultural relics is legally permitted in China. Article 53 of the *Law of the People's Republic of China on Protection of Cultural Relics* expressly authorizes the establishment of culture relics stores. To set up such stores, the application must be directly approved by the administrative department for cultural relics under the State Council or by the administrative department for cultural relics under the People's Government of the relevant province, autonomous region or municipality. The applicant must meet the following requirements to be able to establish a cultural relics store: (1) the applicant must have registered capital of more than 2 million RMB; (2) there are more than 5 persons who have obtained professional and technical positions in cultural relics at or above the intermediate level; (3) there are places, facilities and technical conditions for the preservation of cultural relics; and (4) other conditions stipulated by laws and administrative regulations.¹⁶¹ The decision whether to approve or deny the application will be made within 30 days of receipt of the application. If the application is denied, the government denying the application must provide reasons for the denial in writing to the applicant.

The operation of the cultural relics stores must comply with the law.¹⁶² No cultural relics stores may engage in auction of cultural relics or set up auction enterprises for the purpose. No workers of the administrative department for cultural relics may establish or participate in the establishment engaged in the auction of cultural relics.¹⁶³ No institutions for the collection of cultural relics may establish or participate in the establishment of cultural relics stores. Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or wholly foreign-owned venture are further barred from the establishment of any cultural relics stores. No groups or individuals are allowed to engage in business activities relating to culture relics, including the opening up of any cultural relics stores, absent the required approval.

All cultural relics to be sold by cultural relics stores shall, prior to their sale, be examined and verified by the administrative department for cultural relics under the people's government of the relevant province, autonomous region or municipality directly under the Central Government.¹⁶⁴ All items approved for sale must be marked accordingly by the respective administrative department approving the sale. The cultural relics stores are additionally required to keep records of the cultural relics they purchase and sell, and submit the records to the administrative department for cultural relics that originally examined and verified the relics for the record.¹⁶⁵ The administrative department for cultural relics receiving the submission of the record shall keep it confidential and shall keep such records for 75 years.¹⁶⁶

Cultural relics auction enterprises are also legally permitted in China. Article 54 of the *Law of the People's Republic of China on Protection of Cultural Relics* expressly authorizes the establishment of cultural relics auction enterprises. To set up such stores, the applicant must be licensed by the administrative department for cultural relics under the State Council for auction of cultural relics. To qualify as a cultural relics auction enterprise, the enterprise must have more than five cultural relics auction professionals who have obtained professional and technical positions in advanced cultural relics.¹⁶⁷ The decision whether to approve or deny the application will be made within 30 days from the receipt

¹⁵⁸ Law of the People's Republic of China on Protection of Cultural Relics, art. 50 (2007).

¹⁵⁹ *Id.*, art. 51.

¹⁶⁰ Rules for the Implementation of the Law of the People's Republic of China on the Protection of Cultural Relics, art. 38 (revised 2017).

¹⁶¹ *Id.*, art. 39.

¹⁶² Law of the People's Republic of China on Protection of Cultural Relics, art. 53 (2007).

¹⁶³ *Id.*, art. 55.

¹⁶⁴ Law of the People's Republic of China on Protection of Cultural Relics, art. 56. (2007).

¹⁶⁵ *Id.*, art. 57.

¹⁶⁶ Rules for the Implementation of the Law of the People's Republic of China on the Protection of Cultural Relics, art. 43. (revised 2017).

¹⁶⁷ Rules for the Implementation of the Law of the People's Republic of China on the Protection of Cultural Relics, art. 41 (revised 2017).



Hongji Bridge at Nan Xun, Zhejiang Author: 张士锋, 16 June 2012, Creative Commons Attribution-Share Alike 3.0 Unported license

of the application.¹⁶⁸ If the application is denied, the government denying the application must provide reasons for the denial in writing to the applicant.

The operation of the cultural relics stores must comply with the law. No auction enterprises engaged in the auction of cultural relics may purchase or sell cultural relics or set up cultural relics stores.¹⁶⁹ No workers of the administrative department for cultural relics may establish or participate in the establishment of cultural relics auction enterprises engaged in auction of cultural relics. No institutions for the collection of cultural relics may establish or participate in the establishment of cultural relics auction enterprises. Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or wholly foreign-owned venture are further barred from establishment of any cultural relics auction enterprises. No groups or individuals are allowed to engage in business activities relating to culture relics, including the opening up of any cultural relics auction enterprises, absent the required approval and license.

Cultural relics for auction by auction enterprises shall, prior to their auction, be examined and verified by the administrative department for cultural relics under the People's Government of the relevant province, autonomous region or municipality directly under the Central Government. The matter shall be reported to the administrative department for cultural relics under the State Council for the record. Where the said administrative department cannot determine whether the relics in question may be auctioned, it shall submit the relics to the administrative department for cultural relics under the State Council for examination and verification.¹⁷⁰ All items approved for sale must be marked accordingly by the respective administrative department approving the sale. The cultural relics stores are additionally required to keep records of the cultural relics they purchase and sell, and submit the records to the administrative department for cultural relics that originally examined and verified the relics for the record.¹⁷¹ The

¹⁶⁸ *Id.* art. 42.

¹⁶⁹ Law of the People's Republic of China on Protection of Cultural Relics, art. 55 (2007).

¹⁷⁰ *Id.* art. 56.

¹⁷¹ *Id.* art 57.

administrative department will keep the client or buyer's identity secret if they purchased the cultural relics at the auction, unless otherwise provided by the laws, administrative rules and regulations. The administrative department for cultural relics receiving the submission of the record shall keep it confidential and shall keep such records for 75 years.¹⁷²

With regard to the question of whether the culture relics stores or auction enterprises are common, the answer is yes. For example, the China Guardian Auctions Company sells ancient Chinese coins, paintings, sculptures, and rare books. Further, Chinese citizens purchase coins at antiquities bazaars. According to a letter written on behalf of the *International Association of Professional Numismatists* ("IAPN") to the U.S. Department of State's Cultural Property Advisory Committee, China "maintains a huge, internal collector market in unprovenanced ancient coins...Chinese citizens often purchase their coins at antiquities bazaars...Ancient Chinese coins are also sold within the PRC at any of the many growing number of domestic auction houses."¹⁷³ The letter further finds that the "China Guardian Auctions Company specializes in ancient Chinese coins. It also sells paintings, calligraphy, porcelains, oil paintings, sculptures, rare books, manuscripts, stamps, jadeite, and jewelry items."¹⁷⁴

2. Are transfers allowed in the same kinds of cultural property that is restricted from export?

The domestic trading of culture property and the export of property are subject to separate identification and permit requirements. For example, while the export of the works of several Chinese modern painters and many other popular artists is prohibited in China, the domestic trading of those artworks are permitted. Further, the period for re-export of repatriated artworks was reduced from two years to six months following the date of purchase. A letter written on behalf of the *International Association of Professional Numismatists* ("IAPN") to the U.S. Department of State's Cultural Property Advisory Committee cites an article from *The Economist*, published on November 26, 2009. The article states that "the authorities have been quietly tightening up on the re-export of repatriated artworks. Chinese buyers used to be able to re-export their treasures for up to two years after they had bought them. That period of grace has now been reduced to six months. In addition, China has become increasingly vocal about restricting the trade in its treasures. After nearly five years of negotiation, the Bush administration in its final days agreed to prohibit the import of a wide range of antiquities into America. The agreement was not as strong as China would have liked, and, in recent weeks, its government has said that it will tighten up on the movement of cultural relics out of the country. Its plan is to ban the export of anything made before 1911, corresponding to the end of the Qing dynasty."¹⁷⁵ The same letter states on page 9 that the PRC "prohibits export of the works of several Chinese modern painters including Zhang Daqian (1899-1983), Fu Baoshi (1904-1965) and Qi Baishi (1864-1957) and many other popular artists whose work is now highly valued on the international market."¹⁷⁶

H. Is an inventory of cultural property maintained so that it is possible to establish date of illicit export or import? Is there a system for keeping track of this? (perhaps something other than an inventory?)

The NCHA maintains an inventory of cultural property, including the irremovable culture property, movable culture property as well as intangible culture heritages. With regard to irremovable culture property, the NCHA maintains a database of all Chinese properties listed on the World Heritage List,¹⁷⁷ database of all National Key Cultural Relics Protection Units,¹⁷⁸ database of all Historical Culture Cities,¹⁷⁹ database of all Historical Culture Towns,¹⁸⁰ database of all Historical Culture Villages,¹⁸¹ and database of all Historical Culture Streets¹⁸². The China – UNESCO World Heritage Center also maintains an inventory of properties inscribed on the World Heritage List. China has 52 properties on the World Heritage List. This includes: (1) 36 cultural properties; (2) 12 natural properties; and (3) four mixed properties.¹⁸³ In addition, there are currently 60 sites on what is known and referred to as the "Tentative List". A Tentative List is an

172 Rules for the Implementation of the Law of the People's Republic of China on the Protection of Cultural Relics, art. 43 (revised 2017).

173 Letter written on behalf of IAPN, *supra* n. 168, at 4.

174 *Id.* at 5.

175 *Id.* at 6 (citing *Treasures Reclaimed*, *THE ECONOMIST* (Nov. 29, 2009) <https://www.economist.com/special-report/2009/11/28/treasures-reclaimed>).

176 *Id.* at 9.

177 *List of Chinese Properties on the World Heritage List*, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/sachhome/service/public-info-service.html>.

178 *List of Chinese Properties on the National Key Cultural Relics Protection Units*, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/sachhome/service/national-key-units.html>.

179 *List of Chinese Historical Culture Cities*, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/sachhome/service/historical-district.html?areaClass=1>.

180 *List of Historical Culture Towns*, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/sachhome/service/historical-district.html>.

181 *List of Historical Culture Villages*, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/sachhome/service/historical-district.html?areaClass=3>.

182 *List of Historical Culture Streets*, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/sachhome/service/historical-district.html?areaClass=4>.

183 China, UNESCO WORLD HERITAGE CONVENTION, <http://whc.unesco.org/en/statesparties/cn> (last accessed June 1, 2018).



Funerary Sculpture of a Soldier, China, Sui dynasty, 581-618, Molded earthenware The Pfaffinger Foundation Collection. Los Angeles County Museum of Art, USA

“inventory of those properties which each State Party intends to consider for nomination.”¹⁸⁴ The number of registered immovable cultural properties exceeds 760,000 and the number of state priority protected sites exceeds 4,296. With regard to movable culture property, the NCHA maintains a database of National Collection of Cultural Relics Information which includes information on all culture relics collected by museums in China.¹⁸⁵ Additionally, the NCHA maintains a list of databases of culture properties stolen in foreign countries.¹⁸⁶ However, information regarding establishing the date of illicit export out of China or import into China is not available at the time of submission of this document.

According to *Cultural Heritage Conservation in China: Practices and Achievements in the Twenty-First Century* published by the Getty Conservation Institute in 2016, “China’s Third National Heritage Site Inventory, launched in the past decade and lasting four and one-half years, was the largest ever carried out in the country...The number of registered immovable cultural properties soared from 300,000 to 760,000, while the number of state priority protected sites increased from 750 in 2000 to 4,296 today... By the end of 2015, forty-eight sites in China had been inscribed on the World Heritage List (China has succeeded in World Heritage nomination for thirteen consecutive years since 2003).”¹⁸⁷ *Principles for the Conservation of Heritage Sites in China*, another Getty Conservation Institute’s publication, also describes China’s culture property inventory system as “a comprehensive summary of practices of cultural heritage conservation in China that establishes basic processes and principles, settles some long-existing controversies, improves the level of theoretical studies, sets conservation practice standards, and facilitates mutual learning and communication between China and the international conservation community.”¹⁸⁸

China further reports its intangible culture heritage to the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage established under the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage. Specifically, Article 12 of the Convention for the Safeguarding of the Intangible Cultural Heritage provides that “to ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories shall be

regularly updated. When each State Party periodically submits its report to the Committee, in accordance with Article 29, it shall provide relevant information on such inventories.”¹⁸⁹ Article 16 of the Convention states that “in order to ensure better visibility of the intangible cultural heritage and awareness of its significance, and to encourage dialogue which respects cultural diversity, the Committee, upon the proposal of the State Parties concerned, shall establish, keep up to date and publish a Representative List of the Intangible Cultural Heritage of Humanity.”¹⁹⁰ The Convention was published on October 17, 2003 and China deposited its instrument of ratification on February 12, 2004. Following the ratification of the Convention, China passed its Intangible Cultural Heritage Law, which provides that the “State

¹⁸⁴ *Id.*

¹⁸⁵ *Database of National Collection of Cultural Relics Information*, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/sachhome/service/collectional-info.html>.

¹⁸⁶ *Database of Stolen Culture Property in Foreign Countries*, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/sachhome/service/for-stolen-database.html>.

¹⁸⁷ Mingkang, *supra* n. 2.

¹⁸⁸ *Id.*

¹⁸⁹ Convention for the Safeguarding of the Intangible Cultural Heritage, Oct. 17, 2003, art. 29.

¹⁹⁰ *Id.* art. 16.



A detail of a printed copy of the Diamond Sutra, 868, ink on paper. British Library. © The British Library Board, Or.8210/P.2.

Council shall establish the catalogue of representative items of intangible cultural heritage at the national level and include items of intangible cultural heritage that reflect the distinguished traditional culture of the Chinese nation and has significant historical, literary, artistic or scientific value in the catalogue for protection.”¹⁹¹ To date, that catalogue of intangible cultural heritage is maintained by NCHA and is reported to the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage.

I. Are domestic laws available both domestically and internationally so that exporter/importers know whether, at the time of export or import, the object was exported/imported in violation of the law? How could an exporter/importer check this?

The NCHA maintains a database of all Chinese domestic laws, regulations, policies and normative documents applicable to cultural heritage protection, which are all available to the public.¹⁹² However, most of those documents are in Chinese language only.

Additionally, the UNESCO Database of National Cultural Heritage Laws currently includes thirteen Chinese laws pertaining to cultural property. These laws include the following:¹⁹³

1. Law of the People's Republic of China on Protection of Cultural Relics (1982);
2. Bylaw of the People's Republic of China on Protection of Cultural Relics (2002);
3. Relics Preservation Law (amended 1935) (1935);
4. Law of 1961 (1961);
5. Regulations governing the preservation of scenic resorts, ancient remains and relics (1928);
6. Rules governing the excavation of relics (1935);
7. Rules relating to the participation of foreign academic organizations or private individuals in the excavation of relics (1935);

¹⁹¹ Law of the People's Republic of China on Intangible Cultural Heritage, art. 18 (2011).

¹⁹² Policy and Regulation, STATE ADMIN. OF CULTURAL HERITAGE, <http://gl.sach.gov.cn/sachhome/policy-and-regulations.html>.

¹⁹³ China: National Cultural Heritage Laws, UNESCO <http://whc.unesco.org/en/statesparties/cn/laws>.

8. Administrative rules for examination and approval of entry and exit of cultural relics (2007);
9. Law of the People's Republic of China on protection of cultural relics (2007);
10. Regulations of the People's Republic of China concerning the administration of the protection of the underwater cultural heritage (1989);
11. Regulations for the implementation of the Law of the People's Republic of China on protection of cultural relics (2003);
12. Regulation on protection of famous historical cities, towns and villages (2008); and
13. Regulation on protection of the Great Wall (2008).

An exporter or subsequent owner or holder may consult the laws available in the UNESCO Database to assist in determining whether the object is exported in violation of the law.

Finally, as discussed in more detail above, anyone carrying old cultural relics out of the country should report to the Cultural Relics Management Department for identification and approval and further submit to the customs for clearance. Cultural relics that have been approved for export shall be printed by the appraisal culture management agencies. The notation with the "A" prefix indicates that the cultural relics belong to the cultural relics of the cultural relics business unit; the "B" prefix is the private carrying cultural relics; the "C" prefix is the approved cultural relics. The number following the letter is the issuing record number. Additionally, cultural relics exports must submit to the customs for clearance and are designated to go through customs clearance and inspection procedures at four ports in Beijing, Tianjin, Shanghai and Guangzhou. The relevant units shall declare the export of cultural relics subject to the approval of the cultural administrative department. At the time of customs declaration, the approval certificate of the cultural administrative department, or the Cultural Relics Export License, or the Cultural Relics Export Certificate issued by the State Administration of Cultural Heritage, shall be submitted to the Customs. Thus, an exporter or subsequent owner or holder should check and ensure that the culture property is being exported with the Cultural Relics Exit Permit and the Cultural Relics Export License. The only exception for the permit and license requirement is for the export of cultural relics purchased by residents of other countries in culture relics stores in China. In these cases Customs shall examine and release the "Invoice for the Export of Cultural Relics" issued by the cultural relics store with the "Foreign Exchange Purchase" seal. Absent the Cultural Relics Exit Permit, the Cultural Relics Export License and the Invoices for the Export of Cultural Relics, the culture property is most likely being exported out of China in violation of the law.

J. Where to find export/import forms, other relevant registration documents

All copies of export/import forms and other relevant registration documents are available on NCHA's website, <http://gl.ncha.gov.cn/#/Home/index>. Additionally, some of those forms are also available in the UNESCO Database of National Cultural Heritage. For documents not available in English at the time of submission of this document, a link to a Chinese-language form is provided.

1. Administrative Rules for Examination and Approval of Entry and Exit of Cultural Relics (2007) [Document not available in English];
2. Certificate for Cultural Property Replicas [Document not available in English];
3. Cultural Property Exit Permit of the People's Republic of China;
4. Application Form on Cultural Property Exit Examination and Verification [Document not available in English];
5. Registration Form of Cultural Property Prohibited for Exit [Document not available in English]; and
6. Registration Form for the Examination and Verification of Cultural Property of Temporary Entry [Document not available in English].

III. ADMINISTRATION AND ENFORCEMENT SYSTEMS AND RESULTS

A. Existing systems specifically designed for cultural property management and administration, and public education

State Parties to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property set up national services for the protection of cultural heritage.

Under Article 5 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, “to ensure the protection of their cultural property against illicit import, export, and transfer of ownership, the State Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions: (1) formation of draft laws and regulations; (2) establishing a list of important public and private cultural property; (3) promoting development of scientific and technical institutions; (4) supervision of archaeological excavations; and (5) educational measures to develop respect for cultural heritage.”¹⁹⁴ The Convention was published on November 14, 1970 and China deposited its instrument of acceptance to the Convention on November 28, 1989.



Bi, Jade, Gift of Henry Walters, 1916, Walters Art Museum, Baltimore. Creative Commons Attribution-Share Alike 3.0 Unported license.

As discussed in more detail earlier, China has now established a relatively comprehensive cultural relics protection system to strengthen the protection of cultural relics, stop the destruction of cultural relics and make rational use of cultural relics resources. A series of laws and regulations have been formulated and the corresponding management system has been established. Under the current cultural relics protection system, the core law of China's cultural relics protection is the Cultural Relics Protection Law, and the core authority for the protection of cultural relics throughout the country is the NCHA, with the People's Governments at all levels and the administrative departments of cultural relics responsible for the protection of cultural relics within their respective administrative areas. The basic principles of Chinese cultural relics policy are “protection first, rescue first, rational use and strengthening management”. The official symbol of the field of Chinese cultural relics protection is the Chinese cultural heritage symbol with the gold ornament of the “Four Birds Around the Sun” of the Sands, and the official theme day is the “Cultural Heritage Day” on the second Saturday of June each year. As of October 10, 2018, China has a total of 767,000 non-movable cultural relics, state-owned movable cultural relics 108 million pieces / sets, as well as a large number of folk cultural relics, and more than 5000 national museums.¹⁹⁵

On February 21, 2017, the NCHA issued the 13th Five-Year Plan for the Development of National Cultural Relics, setting forth the general principal of cultural relics protection “to implement the Law of the People's Republic of China on the Protection of Cultural Relics, the Regulations on Museums and the cultural relics work principal “protection first, rescue first, rational use and strengthening management”, and fully implement the Guidance of the State Council on Further Strengthening the Work of Cultural Relics and the Opinions on the Implementation of the China Excellent Traditional Cultural Heritage Development Project, to coordinate the protection of cultural relics and economic and

¹⁹⁴ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970.

¹⁹⁵ The System of Cultural Relics Protection, Utilization and Heritage Will Be Preliminarily Formed in 2025, People's Daily Overseas, October 10, 2018, http://www.gov.cn/zhengce/2018-10/10/content_5329128.htm.

social development, effectively increase the intensity of cultural relics protection, promote the rational and moderate use of cultural relics, make the achievements of cultural relics protection more beneficial to the people, widely mobilize the participation of social forces, and effectively develop in protection, protect in development, and strive to establish its own cultural relics protection and utilization mechanism in line with national conditions.”¹⁹⁶ On October 8, 2018, the State Council issued “Several Opinions on Strengthening the Reform of cultural relics protection and Utilization”. This document is very important in the sense that “it is the first central policy document since the founding of People’s Republic of China specifically for the reform of the protection and utilization of cultural relics and issued in the name of the Central Office and the State Council” and that “it is also a guiding document for the central government to fully deploy the protection and utilization of cultural relics in the new era,” said Liu Yuzhu, director of the NCHA, at a press conference on October 9, 2018.¹⁹⁷ The State Council’s “Several Opinions on Strengthening the Reform of cultural relics protection and Utilization” put forward an overall goal on cultural relics protection: by 2025, establish a mechanism for the protection and utilization of cultural relics in line with China’s national conditions, significantly improve the level of protection of cultural relics in accordance with the law, form the basic cultural relics protection and utilization system, significantly improve the security situation of cultural relics, further optimize the ranks of cultural relics institutions, revitalize the social participation in the field of cultural relics, and achieve the modernization of cultural relics management system and governance capacity.¹⁹⁸

Regarding the management of the utilization of cultural relics resources, the State Council’s “Several Opinions on Strengthening the Reform of cultural relics protection and Utilization”, discussed above, points out that a mechanism for the asset management of cultural relics resources should be established. At the same time, the asset management system of state-owned cultural relics resources will be improved, the management methods of state-owned cultural relics resources assets will be formulated, and the dynamic management mechanism of cultural relics resources assets will be established. China will additionally improve the normal national cultural relics login system and build a large database of national cultural relics resources.¹⁹⁹ The Opinion stresses that cultural relic resources should be utilized in the important role of improving the quality of the people and civilization as well as promoting economic and social development. Local cultural relics departments at all levels should strengthen overall administrative planning and increase the allocation of cultural relics resources in accordance with the law. The units of cultural relics museums should strengthen the function of basic public cultural services and make good use of state-owned cultural relics resources. They should also support the public to make rational use of cultural relics resources in accordance with the law, and provide diversified multi-level cultural products and services.²⁰⁰



Fragment of textile or carpet from Loulan, Xinjiang province, China, dated to 3rd-4th century AD. The wool fragment was retrieved from a refuse heap in Loulan, Xinjiang, China, by the archaeologist Sir Marc Aurel Stein in 1906-1908. The object was among those discovered by Stein’s second Central Asian Expedition. The finds were divided between the two countries. Image of the fragment courtesy of the British Museum, London.

¹⁹⁶ NCHA’s issued the 13th Five-Year Plan for the Development of National Cultural Relics, <http://www.scio.gov.cn/xwfbh/xwfbfh/wqfbh/39595/40355/xgzc40361/Document/1653914/1653914.htm>.

¹⁹⁷ The System of Cultural Relics Protection, Utilization and Heritage Will Be Preliminarily Formed in 2025, People’s Daily Overseas, October 10, 2018, http://www.gov.cn/zhengce/2018-10/10/content_5329128.htm.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*



Buddha dated 338 CE. Later Zhao kingdom (319-351). Asian Art Museum, The Avery Brundage Collection, B60B1034. Photograph © Asian Art Museum of San Francisco. This Buddha bears an inscription on the back that is equivalent to the year 338, the earliest date inscribed on any Buddha sculpture from China, anywhere in the world.

With regard to the public participation mechanism for the protection and utilization of cultural relics, the Opinion points out that the government should adhere to leading and diversified input and mobilize the enthusiasm of the public to participate in the protection and utilization of cultural relics. It gives guidance on enlisting the participation of the public in the cultural protection and management of state-owned non-movable cultural relics. The Opinion also suggests the acquisition of the right to use the peasant houses and their homesteads belonging to cultural relics buildings through circulation and expropriation in accordance with the law.²⁰¹ The Opinion also points out that we should not only support the protection of cultural relics when they need rescued, but should also focus on their protection through prevention. This includes not just the protection of cultural relics themselves, but the overall protection of cultural relics and the surrounding environment. It gives guidance on fiscal reforms and accountability through all levels of government, local and central, involved with cultural relics protection.²⁰²

B. Government agencies or cultural institutions that track or manage cultural property

Several agencies have been established in China to coordinate and take care of culture property protection. Historically, the Cultural Heritage Enterprises Management Bureau under the Ministry of Culture was the national agency in charge of culture heritage protection at the national level under the Law of the People's Republic of China on the Protection of Cultural Relics (1982). That is to say, there was no independent department responsible for the protection of cultural property at that time. Yet, given that cultural heritage protection was facing greater challenges and difficulties in the late 1980s, the Chinese leaders deemed it necessary to promote the status of agencies of cultural heritage protection by upgrading them to independent departments from cultural administrative agencies. Hence, in 1988, the State Council established the State Administration of Cultural Heritage (SACH) as the encompassing agency for protection of Chinese culture heritage under its jurisdiction. It replaced the Cultural Heritage Enterprises Management of the Ministry of Culture in 1988. With the amendment of the Law of the People's Republic of China on the Protection of Cultural Relics in 2002, the SACH became the national-level administrative agency for cultural heritage protection and is in charge of examining, verifying, identifying, and qualifying cultural relics and museums.²⁰³ It also participates in drafting, supervising and examining laws for the preservation of antiques. The main functions of SACH are to “(1) plan the development of museums; (2) draft and standardize the rules and regulations relating to museums as well as identification of cultural relics; (3) organize investigation of cultural resources; (4) participate in drafting, and supervising and examining laws for the preservation of antiques; and (5) to take charge of examination, verification, identification and qualification of cultural relics and museums.”²⁰⁴ The SACH also governs the import and export of cultural property. China also established the China Institute of Culture Property which is mainly responsible for coordinating the training of all national personnel assigned to cultural heritage. Recently, the official English translation of SACH was changed to National Cultural Heritage Administration (NCHA), while the Chinese name remains the same.

Under SACH, local Cultural Heritage Bureaus under local People's Governments at or above the county level, are the local administrative agencies for cultural heritage protection within their own administrative areas. Under the current Cultural Relics Protection law, as discussed in more detail above, cultural relics of different categories are subject to different levels of protection. The NCHA, as the national agency of cultural heritage protection, is directly responsible only for the immovable cultural relics that have been categorized as those under State protection and movable cultural objects categorized as ‘valuable grade-one’. Local governments at different levels are responsible for the remaining immovable and movable cultural objects depending on their respective value or grade. Such an arrangement means that the protection of the overwhelming majority of cultural relics in China are left to local governments. Notwithstanding the above, all local governments have to report to the government at the next higher level, which means all of them report to NCHA.

In addition to the NCHA and the local Cultural Heritage Bureaus, administrative departments other than cultural heritage agencies are ‘responsible for the relevant cultural heritage protection work’ within their respective jurisdictions.²⁰⁵ Thus, under the current law, “public security agencies are responsible for imposing punishments for violations of the Law that constitute violations of public security rules; Customs are responsible for the import-export control of cultural property and may punish people for violations of the Law that constitute customs violation (but not smuggling to a criminal extent); Agencies in charge of commercial and industrial activities are responsible for the monitoring and management of the antiquity market, and may punish persons engage in commercial activity of antiquities without the necessary permission, or they may punish legally established stores or auction houses for violations of their

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ The 2002 Amendment does not in fact mention SACH by name. It instead uses the terms ‘cultural objects administrative agency’ of the State Council. But under the current organization of the State Council, this effectively refers to SACH. Similarly, the 1982 Law does not mention the MOC directly. Instead, it uses the term ‘cultural administrative agency’ of the State Council.

²⁰⁴ *State Administration of Culture Heritage*, STATE COUNCIL: THE PEOPLE'S REPUBLIC OF CHINA (Sept. 23, 2014) http://english.gov.cn/state_council/2014/10/06/content_281474992893400.htm.

²⁰⁵ Law of the People's Republic of China on Protection of Cultural Relics, art. 8 (2007).

relevant operational rules”.²⁰⁶ The administrative authorities of urban and rural construction planning agencies and environmental agencies that fall within their functional realms have also been spelled out by the Law.²⁰⁷ Given that inter-bureaucratism may be produced by the institutional fragmentation, Paragraph Three of Article 9 of the Cultural Relics Protection Law stresses that all relevant administrative agencies shall conscientiously perform their responsibilities for cultural heritage protection and management.

C. Law enforcement and prosecutorial and penal systems involved in violations of cultural property laws

Under Article 14 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, “in order to prevent illicit export and to meet the obligations arising from the implementation of this Convention, each State Party to the Convention should, as far as it is able, provide the national services responsible for the protections of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose.”²⁰⁸ In China, the Criminal Law of the People’s Republic of China and the Law of the People’s Republic of China on Protection of Cultural Relics govern violations of cultural property law. Section 4 of the Criminal Law (Crimes Against Control of Cultural Relics) describes the criminal punishment for damaging or destroying valuable cultural relics. Article 78 of the Cultural Relics Law governs violations by public security organs, Customs, and other State organs for violation of the Law that results in damage or destruction to valuable cultural relics under State protection. The China Intangible Heritage law governs punishment for staff of the department in charge of culture who offend against the customs of the investigation target when conducting the investigation of intangible cultural heritage.

1. Criminal and Civil Penalties for unauthorized possession/illicit trade of cultural property

As discussed in more detail in Part I.C of this Report, the Criminal Code imposes various civil and criminal penalties for cultural property crimes, including crimes against unauthorized possession and illicit trade of cultural property. With regard to unauthorized possession, criminal liability such as imprisonment is imposed under Article 264 of the Criminal Law if a person commits theft of public property. Because undiscovered cultural relics or other forms of cultural property belong to the State, persons who possess cultural property without the State’s authorization have committed theft under Article 264 of the Criminal Law. Also, Article 324 of the Criminal Code (Section 4 Crimes Against Control of Cultural Relics) provides that “whoever intentionally damages or destroys valuable cultural relics under State protection or the major sites designated to be protected at the national or provincial level for their historical and cultural value shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.”²⁰⁹ Similarly, Article 328 states that “whoever robs any site of ancient culture or ancient tomb of a historical, artistic or scientific value shall be sentenced to imprisonment of not less than 3 years but not more than 10 years...”²¹⁰

With regard to illicit trade, China historically had qualified illegal trade of cultural relics as an individual crime. Now, the illicit trade is governed under the crime of smuggling of cultural relics. However, under the Interpretations of the Supreme People’s Court on the Concrete Application of law in the Trial of Criminal Cases of Smuggling (I) (2000) and the Supreme People’s Court promulgated “Interpretations on the Concrete Application of Law in the Trial of Criminal Cases of Smuggling (II) (2006), the crime against illicit trading will be punished under the crime of smuggling. Under Article 151 of the Criminal Code, “whoever smuggles cultural relics...whose export is prohibited by the state...shall be sentenced to imprisonment of not less than 5 years but not more than 10 years and a fine...”²¹¹ Article 326 of the The Criminal Law of People’s Republic of China (2017) prescribes imprisonment and fines to individuals who illegally profit and resell cultural relics. Imprisonment and fines are possible penalties for state-owned entities involved in illicit trade,²¹² and for selling cultural relics to a foreigner²¹³ under articles 327 and 325 of the Criminal Law code.

In addition to the Criminal Code itself, the Cultural Relics Protection Law sets forth numerous civil, administrative and criminal penalties for violations of the Culture Relics Protection Law. For example, Article 64 of the Culture Relics Protection Law provides that anyone who commits one of the following acts, which constitutes a crime, shall be investigated for criminal responsibility according to law: (1) illicitly excavating sites of ancient culture and ancient tombs; (2) intentionally or negligently damaging or destroying valuable cultural relics under State protection; (3) selling

²⁰⁶ Huo, *supra* n. 3, at 9.

²⁰⁷ *Id.*

²⁰⁸ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (UNESCO).

²⁰⁹ Criminal Law of the People’s Republic of China, art.324 (amended 2011).

²¹⁰ *Id.* art. 328.

²¹¹ *Id.* art. 151.

²¹² The Criminal Law of People’s Republic of China, art. 327 (2017).

²¹³ The Criminal Law of People’s Republic of China, art. 325 (2017).



Muya Golden Pagoda at Garzê Tibetan Autonomous Prefecture, Sichuan Province Author: 蒋亦炯, 29 July 2012, Creative Commons Attribution-Share Alike 3.0 Unported license.

without authorization or privately giving the cultural relics in the collection of State-owned cultural institutions to a unit not owned by the State or an individual; (4) selling or giving, without authorization, to foreigners valuable cultural relics that the State prohibits from being taken out of the country; (5) seeking profits by reselling the cultural relics that are prohibited by the State from being dealt in; (6) smuggling cultural relics; (7) robbing, plundering or privately dividing State-owned cultural relics or illicitly taking them into his possession; or (8) other acts hindering the control over cultural relics and that shall be investigated for criminal responsibility.²¹⁴ Anyone who causes the displacement or damage to cultural relics shall bear civil responsibility according to law, and where the violation of Culture Relics Protection Law constitutes an act against security administration, the public security organ shall impose a security administration punishment according to law,²¹⁵ and where the violation of the Culture Relics Protection Law constitutes an act of smuggling, but is not serious enough to constitute a crime, Customs shall impose a punishment in accordance with the provisions of the relevant laws and administrative rules and regulations.²¹⁶ Any unit that commits one of the following acts, which is not serious enough to constitute a crime, shall be ordered by the competent administrative department for cultural relics under the people's government at or above the county level to put it right; if serious consequences are caused, it shall be fined not less than RMB 50,000 yuan but not more than 500,000 yuan; and if the circumstances are serious, the authority that originally issued the qualification certificate shall revoke the certificate under the following circumstances: (1) without authorization, conducting construction project or such operations as blasting, drilling and digging within the area of protection for a historical and cultural site; (2) conducting construction project in an area for the control of construction within a site protected for its historical and cultural value: the design for which is not submitted to the administrative department for cultural relics for consent or to the urban and rural construction planning department for approval, and which deforms the historical features of the site protected for its historical and cultural value; (3) removing or dismantling irremovable cultural relics without authorization; (4) repairing irremovable cultural relics without authorization and obviously changing their original state; (5) without authorization, rebuilding on the original site irremovable cultural relics that are totally damaged and thus destroying the cultural relics; or (6) in the case of a construction unit without qualification certificate for projects designed to protect cultural relics, repairing, removing or reconstructing cultural relics.²¹⁷ Anyone who scrawls or smears on cultural relics or does moderate damage to them or to the signs of the sites, which are put up in accordance with the provisions of the first

²¹⁴ Law of the People's Republic of China on Protection of Cultural Relics, art. 64 (2007).

²¹⁵ Security administration punishment is a kind of administrative punishment measures and is unique to China. Punishment would include, for example, admonition, fines and temporarily detention.

²¹⁶ *Id.* art. 65.

²¹⁷ *Id.* art. 66.



Cave 285 at the Mogao Grottoes. The Getty Conservation Institute (GCI) has worked with the Dunhuang Academy for the conservation and management of the Mogao caves for over 25 years. Photo: Dunhuang Academy.

paragraph of Article 15 of the Culture Relics Protection Law and are protected for their historical and cultural value, shall be given disciplinary warning by the public security organ or by the unit where the cultural relics are located, and may, in addition, be imposed a fine.²¹⁸ Any unit or individual that commits one of the following acts shall be ordered by the competent administrative department for cultural relics under the people's government at or above the county level to put it right and its/his unlawful gains derived therefrom shall be confiscated; if the amount of such unlawful gains is more than 10,000 yuan, it/he shall be fined not less than two times, but not more than five times, the amount of the unlawful gains; and if the amount of the unlawful gains is less than 10,000 yuan, it/he shall be fined not less than 5,000 yuan but not more than 20,000 yuan: (1) transferring or mortgaging State-owned immovable cultural relics, or making them enterprise assets for business operation; (2) transferring or mortgaging irremovable cultural relics not owned by the State to foreigners; or (3) without authorization, changing the purpose of use of a site protected for State-owned cultural relics.²¹⁹ Where the layout, environment, historical features, etc. of a famous city, town, neighborhood or village of historical and cultural value are seriously undermined, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law.²²⁰ Where a unit commits one of the following acts, which is not serious enough to constitute a crime, the competent administrative department for cultural relics under the people's government at or above the county level shall order it to put it right and may in addition, impose on it a fine of not more than 20,000 yuan; and if there are unlawful gains derived therefrom, such unlawful gains shall be confiscated: (1) in the case of an institution for the collection of cultural relics, failing to have facilities against fire, robbery and natural damage installed as required by the provisions of the relevant regulations

²¹⁸ *Id.*

²¹⁹ *Id.* at art. 68.

²²⁰ Law of the People's Republic of China on Protection of Cultural Relics, art. 69 (2007).

of the State; (2) in the case of a the legal representative of an institution for the collection of State-owned cultural relics, when leaving his post, failing to hand over the cultural relics in accordance with the files on the cultural relics in the collection of the institution, or the cultural relics handed over are not in agreement with the files; (3) donating, leasing or selling State-owned cultural relics in the collection of cultural institutions to other units or individuals; (4) disposing of State-owned cultural relics in the collection of cultural institutions in violation of the provisions of Articles 40, 41 and 45 of the Culture Relics Protection Law; or (5) in violation of the provisions of Article 43 of the Culture Relics Protection Law, misappropriating or taking into one's own possession the amount of compensation gained from the cultural relics transferred, exchanged or lent according to law.²²¹ Where a unit or individual deals in cultural relics that the State prohibits from being dealt in or transfers, leases or mortgages to foreigners cultural relics that the State prohibits from being taken out of the country, and the infraction is not serious enough to constitute a crime, the competent administrative department for cultural relics under the people's government at or above the county level shall order it/him to put it right and confiscate its/his unlawful gains derived therefrom; if the amount of the earnings from such illegal operations is more than 10,000 yuan, it/he shall, in addition, be fined not less than two times, but not more than five times, the amount of the said earnings; and if it is less than 10,000 yuan, it/he shall, in addition, be fined not less than 5,000 yuan but not more than 20,000 yuan.²²² Where a person, without permission, establishes a cultural relics store or an auction enterprise engaged in auction of cultural relics, or engages in business operations in cultural relics, which is not serious enough to constitute a crime, the administrative department for industry and commerce shall, in accordance with law, stop him and confiscate his unlawful gains derived therefrom and the cultural relics dealt in; if the amount of the earnings from such illegal operations is more than 50,000 yuan, he shall be fined not less than two times, but not more than five times, the amount of the earnings; and if the amount of the said earnings is less than 50,000 yuan, he shall be fined not less than 20,000 yuan but not more than 100,000 yuan.²²³ Where a unit is found in one of the following circumstances, its unlawful gains and the cultural relics illegally dealt in shall be confiscated by the administrative department for industry and commerce; if the amount of earnings from such illegal operations is more than 50,000 yuan, it shall, in addition, be fined not less than the amount of, but not more than three times the amount of, such earnings; if the amount of such earnings is less than 50,000 yuan, it shall, in addition, be fined not less than 5,000 yuan but not more than 50,000 yuan; and if the circumstances are serious, its license shall be revoked by the original authority that issued the license: (1) if a cultural relics store engages in the auction of cultural relics; (2) if an auction enterprise engaged in auction of cultural relics purchases or sells cultural relics; (3) if the cultural relics dealt in by a cultural relics store or auctioned by an auction enterprise are not examined and verified; or (4) if an institution for the collection of cultural relics engages in business operations in cultural relics.²²⁴ Where a person commits one of the following acts, which is not serious enough to constitute a crime, the competent administrative department for cultural relics under the people's government at or above the county level together with the public security organ shall recover the cultural relics; and if the circumstances are serious, he shall be fined not less than 5,000 yuan but not more than 50,000 yuan: (1) concealing or refusing to hand over cultural relics discovered; or (2) failing to turn over the cultural relics sorted out, as required by relevant regulations.²²⁵ Any unit that commits one of the following acts shall be ordered by the competent administrative department for cultural relics under the people's government at or above the county level to put it right: (1) failing to report, as required by the provisions of the Culture Relics Protection Law, the change in the use of the State-owned irremovable cultural relics of a site not verified as one to be protected for its historical and cultural value; (2) failing to put on record, as required by the provisions of the Cultural Relics Protection Law, the transfer or mortgage of the irremovable cultural relics not owned by the State or the change in their use; (3) in the case of a user of State-owned irremovable cultural relics, refusing to perform, in accordance with law, his obligation to repair them; (4) in the case of an institution engaged in archaeological excavation, conducting archaeological excavation without authorization, or failing to give a truthful report of the results of the excavation; (5) in the case of an institution for the collection of cultural relics failing to compile files of the cultural relics in its collection and establish a system of the control over them, as required by the relevant regulations of the State, or failing to report the files and the system of control for the record; (6) in violation of the provisions of Article 38 of the Culture Relics Protection Law, obtaining, through transfer, cultural relics in the collection of a cultural institution without approval; (7) in the case of an institution for the collection of cultural relics, failing to report the damages of the cultural relics in its collection to the administrative department for cultural relics for examination, verification and disposition, or failing to report immediately to the public security organ or the administrative department for cultural relics about the cultural relics in its collection that are stole, robbed or missing; or (8) in the case of a cultural relics store or an auction enterprise, failing to keep records of the cultural relics it sold or auctioned, or failing to submit the records to the administrative department for cultural relics for the record, as required by the relevant regulations of the State.²²⁶ Where a worker of an administrative department for cultural relics, or of an institution for the collection of cultural

²²¹ *Id.* art. 70.

²²² *Id.* art. 71.

²²³ *Id.* art. 72.

²²⁴ *Id.* art. 73.

²²⁵ Law of the People's Republic of China on Protection of Cultural Relics, art. 74 (2007).

²²⁶ *Id.* art. 75.



Funerary Sculpture of a Bactrian Camel, China, Chinese, middle Tang dynasty, about 700-800, Sculpture, Molded earthenware, William Randolph Hearst Collection, Los Angeles County Museum of Art, USA

relics, or of a cultural relics store or a cultural relics auction enterprise commits one of the following acts, he shall be punished with administrative sanctions according to law; if the circumstances are serious, he shall be discharged from public employment or disqualified for the job according to law; and if a crime is found, he shall be investigated for criminal responsibility according to law: (1) in the case of a worker of an administrative department for cultural relics, in violation of the provisions of this Law, abusing his power of examination and approval, failing to perform his functions and duties, or failing to investigate and handle unlawful acts discovered, which causes serious consequences; (2) in the case of a worker of an administrative department for cultural relics and or an institution for the collection of State-owned cultural relics, borrowing or illegally taking into his possession State-owned cultural relic; (3) in the case of a worker of an administrative department for cultural relics, establishing or participating in the establishment of cultural relics stores or auction enterprises engaged in auction of cultural relics; (4) causing damage or destruction to the sites protected for their historical and cultural value and to valuable cultural relics or causing missing of such relics due to disregard of responsibility; or (5) embezzling or misappropriating funds earmarked for the protection of cultural relics.²²⁷ No persons discharged from public employment or disqualified for the job, as mentioned in the preceding paragraph, may be employed for administrative of cultural relics or deal in cultural relics within ten years from the date of discharge or disqualification.²²⁸ Where the persons directly in charge of the unit that commits one of the following acts mentioned in Articles 66, 68, 70, 71, 74 and 75 of the Culture Relics Protection Law and the other persons directly responsible are

²²⁷ *Id.* art. 76.

²²⁸ *Id.*

State functionaries, they shall be given administrative sanctions according to law.²²⁹ Where public security organs, the administrative departments for industry and commerce, the Customs, the departments for urban and rural construction planning and other State organs, in violation of the provisions of this Law, abuse their powers, neglect their duties, or engage in malpractice for personal gains, thus causing serious damage or destruction to the valuable cultural relics under State protection or causing their missing, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law.²³⁰

The Culture Relics Protection Implementation Regulations also provides numerous civil, administrative and criminal penalties for cultural property violations. For example, Article 54 of the Culture Relics Protection Implementation Regulation provides that if the public security organ, the administrative department for industry and commerce, cultural relics, customs, urban and rural planning and construction and its staff, in violation of the provisions of these Regulations, abuse their examination and approval authority, fail to perform their duties or discover illegal acts without investigation or punishment, the person in charge and other persons directly responsible shall be given administrative sanctions according to law and criminal responsibility shall be investigated in accordance with the law.²³¹ Whoever fails to obtain a certificate of qualification for cultural relics protection projects at the corresponding level and undertakes the repair, relocation or reconstruction projects of cultural relics protection units without authorization shall be ordered by the administrative department of cultural relics to make corrections within a specified period of time; Criminal responsibility shall be investigated in accordance with the law.²³² Whoever fails to obtain the qualification certificate of the corresponding grade issued by the administrative department for construction, and undertakes the repair, relocation or reconstruction works of the cultural relics protection unit containing the construction activities without authorization, the administrative department for construction shall punish it in accordance with the provisions of the relevant laws and administrative regulations.²³³ Whoever fails to obtain a certificate of qualification and engage in the restoration, reproduction or printing activities of cultural relics in their collections without authorization shall be ordered by the administrative department of cultural relics to stop illegal activities; Criminal responsibility shall be investigated in accordance with the law.²³⁴ Whoever repairs, reproduces, prints or photographs the collection of precious cultural relics without authorization shall be given a warning by the administrative department of cultural relics; if serious consequences are caused, a fine of not less than 2000 yuan and not more than 20,000 yuan shall be imposed; and administrative sanctions shall be imposed on the persons in charge and other persons directly responsible in accordance with the law.²³⁵ If an archaeological excavation unit fails to submit a closing report or archaeological excavation report within the prescribed time limit, it shall be ordered by the administrative department of cultural relics of the people's government of the province, autonomous region or municipality directly under the Central Government or the administrative department of cultural relics under the State Council to make corrections within the time limit; Administrative sanctions shall be imposed on the persons in charge and other persons directly responsible in accordance with the law.²³⁶ If an archaeological excavation unit fails to hand over cultural relics within the prescribed time limit, it shall be ordered by the administrative department of cultural relics of the people's government of the province, autonomous region or municipality directly under the Central Government or the administrative department of cultural relics under the State Council to make corrections within the time limit; Administrative sanctions shall be imposed on the persons in charge and other persons directly responsible in accordance with the law.²³⁷

Other than the civil, administrative and criminal penalties set forth in the Culture Relics Protection Law and the Culture Relics Protection Implementation Regulations, there are numerous civil, administrative and criminal penalties set forth in the relevant culture protection statutes for various kinds of culture protection violations. For example, imprisonment, fine, and even death penalty are possible under Customs Law of the People's Republic of China for individuals who smuggle cultural relics or objects. Seized property will be forfeited by the State. The seized property becomes state-owned property.²³⁸

2. Enforcement

Despite those penalties discussed above, the enforcement in China for culture protection violations are generally

²²⁹ *Id.* art. 77.

²³⁰ Law of the People's Republic of China on Protection of Cultural Relics, art. 78 (2007).

²³¹ Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics, art. 54 (2003).

²³² *Id.*, art. 55.

²³³ *Id.*

²³⁴ *Id.*, art. 56.

²³⁵ *Id.*, art. 58.

²³⁶ Regulations for the Implementation of the Law of the People's Republic of China on Protection of Cultural Relics, art. 59 (2003).

²³⁷ *Id.*, art. 60.

²³⁸ The Customs Law of the People's Republic of China, art. 82 (2002).

viewed as weak. This has been strongly criticized and has been viewed as one major reason for frequent cultural protection violations, including the smuggling and the destruction of cultural relics in China. Overall, China is experiencing more cultural property-related crimes and the government has been trying to enforce laws and prevent more crimes. An official from the NCHA stated that the NCHA will cooperate with the Public Security Bureau to strengthen enforcement.²³⁹ There are also strong voices in China to further strengthen the civil, administrative and criminal penalties for better cultural relics protections.

China does impose liabilities on those who are responsible for the enforcement of cultural relics protection. For example, Article 78 of the Law of the People's Republic of China on Cultural Relics provides that "where public security organs, the administrative departments for industry and commerce, the Customs, the departments for urban and rural construction planning and other State organs, in violation of the provisions of this Law, abuse their powers, neglect their duties, or engage in malpractice for personal gains, thus causing serious damage or destruction to the valuable cultural relics under State protection or causing their missing, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law."²⁴⁰ Similarly, Article 38 of the China Intangible Cultural Heritage Law provides that the "staff of the departments in charge of culture and other relevant departments who are derelict in duties, abuse powers, practice favoritism or commit irregularities in the work concerning the protection and preservation of intangible cultural heritage shall be punished in accordance with the law."²⁴¹ Article 39 of the China Intangible Cultural Heritage Law further provides that the "staff of the departments in charge of culture and other relevant departments who offend against the customs of the investigation target when conducting the investigation of intangible cultural heritage and cause serious consequences shall be punished in accordance with the law."²⁴²

Despite these liabilities on those who are in charge of cultural relics protection, relics protection remains not very effective in China. This is partially due to the multiple levels of enforcement mechanism in China. As discussed in more detail earlier, the NCHA, Department of Cultural Relics Administration under the State Council are national enforcement agencies, but the local governments follow the central government and enforce laws related to cultural property too.

Conflict exists in enforcement at the central and local levels of Procurators (similar to prosecutors), and it is often not entirely clear "which level of the government has the responsibility of protecting cultural relics and archaeological sites."²⁴³ "Despite this grant of power to the central government for regulating cultural property, many provinces, autonomous regions, and local governments have taken it upon themselves to pass their own cultural property policies, which often conflict with those that the Ministry of Culture and the State Bureau of Cultural Relics promulgate."²⁴⁴ "The vagueness of this language and the difficulty in ascertaining which level of government has administrative jurisdiction over any particular cultural relic and the level of protection required is readily apparent."²⁴⁵ Also, even if the Public Security Bureau had made efforts to crack down on illegal trade and the theft of cultural property, a lack of personnel and funding makes enforcement difficult.²⁴⁶

Some additional problems also exist in China's cultural relics protection system. For example, in an article published on the Chinese government's official website, a reporter from People's Daily pointed out that: 1) the current laws on cultural relics protection are not comprehensive (examples are the lack of laws on how to protect old streets and how to obtain cultural relics owned by foreign persons and entities); 2) the current legislation is not comprehensive because some new categories of cultural relics are not protected yet.²⁴⁷ Furthermore, the enforcement of cultural relics protection laws has not been very consistent. For example, in a city in Heibei province, it was reported that nine defendants who tried to steal cultural property were sentenced to imprisonment of different lengths (ranging from 9 months and 11 years).

239 679 *Illegal Activities were Discovered During 232,103 Investigations*, XINHUA (April 17, 2018) <http://culture.cpd.com.cn/n2572253/n2572282/c40958483/content.html>.

240 Law of the People's Republic of China on Protection of Cultural Relics, art. 78 (2007).

241 Law of the People's Republic of China on Intangible Cultural Heritage art. 38, adopted 19th Session of the Standing Comm. of the 11th Nat'l People's Cong. of the P.R.C. Feb. 25, 2011, in force as of June 1, 2011.

242 *Id.* art. 39.

243 Michael L. Dutra, *How Much is That Ming Vase in The Window? Protecting Cultural Relics in the People's Republic of China*, ASIAN-PACIFIC L. & POL'Y J. (2004).

244 *Id.*

245 See Anne Carlisle Schmidt, *The Confuciusornis Sanctus: An Examination of Chinese Cultural Property Law and Policy in Action*, 23 B.C. INT'L & COMP. L. REV. 185, 199-200 (2000).

246 *Crimes Related to Cultural Property are Growing and the State Uses more Force to Enforce Law*, CHINA NEWS (November 16, 2017).

247 *Cultural Relics Protection Laws Still Have Blanks*, CHINALAW (Apr. 14, 2014) http://www.chinalaw.gov.cn/art/2014/4/14/art_2_167575.html.



*Statue at Hupao Spring (Hupaomengquan) in Hangzhou, China. The name translates to “Dreaming of the Tiger”.
Photo by Sh 1019, Creative Commons Attribution-Share Alike 3.0 Unported license.*

D. Courts having jurisdiction over cultural property issues

Cultural property issues are normally handled administratively, but certain matters are handled by the court system. Under the Provisional Provisions on the Procedures for Administrative Punishment of Cultural Relics (2005), unless otherwise provided by laws and regulations, administrative penalties for cultural relics shall be under the jurisdiction of the local administrative department of cultural relics at or above the county level where the illegal act occurred.²⁴⁸ The administrative department of cultural relics under the State Council shall supervise and direct the administrative department of local cultural relics to handle cases of administrative punishments with significant national impact.²⁴⁹ The administrative department of cultural relics at the provincial level may, in accordance with the relevant provisions and the actual situation in the region, prescribe the jurisdiction of the jurisdiction within the jurisdiction.²⁵⁰ If necessary, the administrative department of cultural relics at a higher level may have direct jurisdiction over administrative punishment cases under the jurisdiction of the administrative department of cultural relics at a lower level, and if the administrative department of cultural relics at a lower level considers that it needs to be under the jurisdiction of the administrative department of cultural relics at a higher level, it may report them to the administrative department of cultural relics at a higher level for decision.²⁵¹ When the administrative department of cultural relics at or above two places has jurisdiction over the same illegal act, it shall be under the jurisdiction of the administrative department of cultural relics that first filed a case.²⁵² Where a dispute occurs between the local administrative departments of cultural relics due to jurisdiction, the dispute shall be resolved through consultation between the two parties to the dispute; if the consultation fails, the administrative department of cultural relics at the next higher level shall be requested to designate jurisdiction, and the administrative department of cultural relics at the next higher level shall directly designate jurisdiction.²⁵³ If the administrative department of local cultural relics discovers that the case does

²⁴⁸ Provisional Provisions on the Procedures for Administrative Punishment of Cultural Relics, art. 5.

²⁴⁹ Provisional Provisions on the Procedures for Administrative Punishment of Cultural Relics, art. 6.

²⁵⁰ *Id.*

²⁵¹ Provisional Provisions on the Procedures for Administrative Punishment of Cultural Relics, art. 7.

²⁵² Provisional Provisions on the Procedures for Administrative Punishment of Cultural Relics, art. 8.

²⁵³ *Id.*

not belong to the jurisdiction or in charge of the unit, it shall transfer the relevant materials to the administrative department of cultural relics with jurisdiction or the relevant administrative department for handling, and at the same time report the case to the administrative department of cultural relics at the next higher level for the record.²⁵⁴ The administrative department of cultural relics transferred shall promptly send the results of the case to the administrative department of cultural relics transferred to the case.²⁵⁵ If the administrative department of cultural relics transferred believes that the transfer is improper, it shall report to the administrative department of cultural relics at the next higher level, and may not transfer it again.²⁵⁶ The head of the administrative department of cultural relics shall issue a decision on administrative punishment, and such decision must include the way and time limit for applying for administrative reconsideration or filing administrative proceedings against the decision of administrative punishment.²⁵⁷ If the party concerned fails to fulfill the decision on administrative punishment within the time limit, the administrative department for cultural relics shall apply to the people's court for enforcement.²⁵⁸

If the cultural property issue in dispute does not fall under the scope of administrative penalties, it is likely to be governed by the courts. Both the forum level jurisdiction and territorial jurisdiction need to be analyzed to determine whether a people's court will be able to take the claim. The lower people's courts have jurisdiction as courts of first instance over all civil cases, unless otherwise provided in the Civil Procedure Law.²⁵⁹ The intermediate people's courts have jurisdiction as courts of first instance over major cases involving foreign elements, cases that have major impact on the area under their jurisdiction or other cases determined by the Supreme People's Court to be under the jurisdiction of the intermediate people's courts.²⁶⁰ Major foreign-related cases include cases involving a large amount in dispute, a case with complicated circumstances, a case in which one side consists of a large number of parties, and other cases having a major impact.²⁶¹ The high people's courts shall have jurisdiction as courts of first instance over civil cases that have major impact on the areas under their jurisdiction.²⁶² The Supreme People's Court shall have jurisdiction as the court of first instance over cases that have major impact on the whole country or any other cases the Supreme People's Court deems it should try.²⁶³ Unless the law provides otherwise, the territorial jurisdiction is generally based on where the defendant has his or her domicile or habitual residence.

On April 17, 2018, the Supreme People's Court and the NCHA entered into the Framework Agreement on Strengthening Cooperation in the Protection of Judicial Relics and Cultural Relics ("Framework").²⁶⁴ The aim of the Framework is to explore the establishment of a common mechanism for the construction of justice and cultural relics, and to give full play to the role of justice in safeguarding cultural relics.²⁶⁵

The Framework calls for the people's court to: (1) severely punish the crime of theft, excavation, destruction, resale and smuggling of cultural relics, actively carry out international judicial cooperation, and vigorously recover cultural relics lost abroad, (2) strengthen the interface between administrative law enforcement and criminal justice of cultural relics, strengthen the interpretation of cases, and promote the awareness of the protection of cultural relics in the whole society, and (3) strengthen the analysis of judicial data on all types of cultural relics-related cases, improve relevant judicial policies, make suggestions and make recommendations, and promote the improvement of a long-term mechanism for preventing and punishing crimes against cultural relics.²⁶⁶ At the same time, the people's court will continuously improve the level of specialization and informationization, vigorously promote the rescue of judicial relics throughout the country, and constantly enrich the court museum collection resources.²⁶⁷

254 Provisional Provisions on the Procedures for Administrative Punishment of Cultural Relics, art. 9.

255 *Id.*

256 *Id.*

257 Provisional Provisions on the Procedures for Administrative Punishment of Cultural Relics, art. 34.

258 Provisional Provisions on the Procedures for Administrative Punishment of Cultural Relics, art. 50.

259 Article 17, Civil Procedure Law.

260 Article 18, Civil Procedure Law. Cases involving foreign element include cases where: (1) one or both parties are foreigners, stateless persons, foreign enterprises or organizations; (2) the place of habitual residence of one or both parties outside the territory of the People's Republic of China; (3) the subject matter is outside the territory of the People's Republic of China; (4) the legal facts that produce, alter or destroy civil relations occur outside the territory of the People's Republic of China; and (5) other circumstances that may be recognized as foreign-related civil cases. Article 522, Supreme People's Court's Interpretation on Civil Procedure Law.

261 Article 1, Supreme People's Court's Interpretation on Civil Procedure Law.

262 Article 19, Civil Procedure Law.

263 Article 20, Civil Procedure Law.

264 China's Courts will Step Up Judicial Protection of Cultural Relics and Properly Try Cases Involving Cultural Relics, Xinhua Net, April 18, 2018, China's courts will step up judicial protection of cultural relics and properly try cases involving cultural relics.

265 *Id.*

266 *Id.*

267 *Id.*



Five fingers peak. Quartzite sandstone Huangshizhai Zhangjiajie Wulingyuan Hunan, China. Panorama 2012. Photo by Chensiyuan, Creative Commons Attribution-Share Alike 4.0 International

E. Data on prosecutions per year related to cultural property violations and data on convictions

While China does not contain a comprehensive database on prosecutions related to cultural property violations, the Supreme People's Court website provides a large database of cases and provides some insight. To provide some background, prior to 2016, the Supreme People's Court required all Chinese courts to post their judgments on China Judgements Online so it was possible to obtain all cases related to cultural relics protection at that time.²⁶⁸ However, on August 29, 2016 the Supreme People's Court revised rules concerning online publication of judgments of Chinese courts at all levels and specified the types of judgment documents that the courts must post online. Under the revised rule, certain types of judgments are not published.²⁶⁹ While the result is not comprehensive, some searches were performed on the Supreme People's Court's website. As of August 2018, 109 cases were found by using the search term "illicit trade of cultural relics (dao mai wen wu)," and 88 cases were found by using the search term "smuggling of cultural relics (zou si wen wu)."²⁷⁰ This is by no way comprehensive but this reflects that the government has been trying to enforce the laws.

The Chinese government and other news sources also periodically report on the prosecutions and convictions related to cultural property violations. For example, in 2017, China had 232,103 investigations and discovered 679 illegal activities related to cultural property.²⁷¹ Some significant cases involving cultural property are also often reported.

For example, the Sichuan police had a crackdown on a major cultural relics theft and selling ring in Pengshan county of Sichuan Province in 2015 and estimated that the value was over USD 15.7 million.²⁷² In another case, "an official of North China's Hebei province was executed Friday for stealing and selling cultural relics, including many on the state protection list."²⁷³ The official "pocketed more than 3.2 million yuan (\$482,240) and \$72,000 after selling 152 stolen pieces."²⁷⁴

²⁶⁸ Provisions of the Supreme People's Court on the Publication of Judgement Documents of the People's Courts' on the Internet [最高人民法院关于人民法院在互联网公布裁判文书的规定], (November 21, 2013) <https://www.chinacourt.org/law/detail/2013/11/id/147242.shtml>.

²⁶⁹ *China: Rules of Online Publication of Court Judgments Revised*, LIBRARY OF CONGRESS (February 9, 2017) <http://www.loc.gov/law/foreign-news/article/china-rules-of-online-publication-of-court-judgments-revised/>.

²⁷⁰ See <http://wenshu.court.gov.cn/>.

²⁷¹ 679 Illegal Activities were Discovered During 232,103 Investigations, XINHUA (April 17, 2018) <http://culture.cpd.com.cn/n2572253/n2572282/c40958483/content.html>.

²⁷² *Theft cCase of cCulture relics Llinks to China's Mmysterious Ttreasure*, CHINA DAILY (September Sept. 18, 2015) http://usa.chinadaily.com.cn/culture/2015-09/18/content_21918407.htm.

²⁷³ *Official Executed for Stealing Cultural Relics*, CHINA DAILY (November 20, 2010), http://europe.chinadaily.com.cn/china/2010-11/20/content_11585097.htm.

²⁷⁴ *Id.*

F. Procedures for recovery of cultural property lost to other foreign nations

According to the Chinese Society of Cultural Relics, since the Opium War in 1840, more than 10 million Chinese cultural relics have been lost to Europe, the United States, Japan and Southeast Asian countries and regions, of which more than 1 million are national first- and second-class cultural relics.²⁷⁵ According to UNESCO statistics, there are 1.64 million Chinese artifacts in more than 200 museums in 47 countries, while the collection of Chinese artifacts is 10 times the number of Chinese objects in the collection.²⁷⁶ Both statistics reflect a similar figure: more than 10 million Chinese cultural relics abroad. As for the exact number, I'm afraid it will remain a mystery. According to incomplete statistics, regarding the cultural relics lost from China, the United Kingdom has a collection of about 1.3 million, France has about 2.6 million, Japan has about 2 million, Germany has about 300,000, there are 12,000 books from Dunhuang alone, second only to China, about 200,000 in Canada, and about 2.3 million Chinese cultural relics have flowed into the United States in the past 30 years.²⁷⁷

The reasons for the loss of Chinese cultural relics abroad are generally due to theft during war, agent collection, illegal smuggling, migrant carrying, legal trade, and reward. There were three main attempts to rob cultural relics through war. The first attempt was during the second Opium War where British and French forces invaded the Yuanmingyuan, the second attempt was when the eight-nation allied forces captured Beijing in 1900, and the third attempt was during the Japanese invasion of China from 1931 to 1945, all of which led to the looting of incalculable cultural relics.²⁷⁸ On the other hand, museums, art galleries, libraries, foundations and private collectors in Europe and the United States have a long history of collecting cultural relics through agents in China during a time period when China's cultural relics protection regulations were weak. The flow of Chinese cultural relics in this way is not only large in number, but also includes a large number of valuable cultural relics.²⁷⁹ The market for cultural relics has been heating up, especially with the development of the domestic cultural relics market. The smuggling of cultural relics out of China gradually became more organized and smuggling methods were increasingly diversified, the rate and quantity of cultural relics lost overseas is alarming. In the future, with the rapid increase in value of Chinese cultural relics and the stimulation of high market prices, without effective supervision, the theft, smuggling and resale of cultural relics will become more rampant. The discussion in this part is limited to Chinese cultural relics lost due to unethical and illegal means such as war looting and plundering. It excludes relics exported through normal and legal trade, sale or as gifts.

The recovery of cultural relics has attracted more and more attention from the world. Generally speaking, the return of lost cultural relics to the country of origin has been conducted in four ways: through legal recourse, diplomatic negotiations, national or private repurchase, and donation exchange. Of these, the most difficult means to recover cultural relics is via legal recourse.

Recovery of cultural relics via legal recourse has mostly been done through international treaties or bilateral agreements. China has acceded to UNESCO and other international conventions, and has signed bilateral agreements with Peru, India, Italy, the Philippines, Greece, Chile, Cyprus, the United States France, Australia, Switzerland, and other countries to prevent the theft and illegal entry and exit of cultural relics. Through international cooperation, thousands of Chinese cultural relics have been successfully recovered. The major international conventions include the Convention on the Prohibition and Prevention of the Illegal Import and Export of Cultural Property and the Illegal Transfer of Ownership by UNESCO in 1970 (the 1970 Convention) and the Convention on the Stolen or Illegal Export of Cultural Relics, adopted in 1995 by the International Institute for the Unification of Private Law (the 1995 Convention).

According to UNESCO, theft from museums and archaeological sites increased, especially in developing and less developed countries, in the late 1960s and early 1970s. In developed countries, private collectors and even official agencies have also seen an increase in the theft of cultural property.

The International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects governs the procedures for the recovery of stolen cultural objects. This includes the involvement of the judicial system or other competent authorities of the Contracting States to order the return of illegally exported cultural objects. China maintains agreements with the Arab Republic of Egypt and the Swiss Confederation regarding the appropriate legal steps to recover and return stolen cultural property. According to Article 3(2) of the 1995 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." Article 5(1) of the

²⁷⁵ *Why it's Hard for Cultural Relics Overseas to "Go Home,"* JIEFANG DAILY (May 1, 2018), http://www.xinhuanet.com/world/2018-05/01/c_129862626.htm (Chinese).

²⁷⁶ *Id.*

²⁷⁷ *The Return of Cultural Relics is an Irreversible International Trend*, PHOENIX ART (Aug. 29, 2019), wap.art.ifeng.com/?app=system&controller=artmobile&action=content&contentid=3486753.

²⁷⁸ *Why it's Hard for Cultural Relics Overseas to "Go Home,"* *supra* n. 231.

²⁷⁹ *Id.*

1995 Convention further provides that “a Contracting State may request the court or other competent authority of another Contracting State to order the return of a cultural object illegally exported from the territory of the requesting state”. Article 5(2) of the 1995 Convention further provide that “a cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purposes of protecting its cultural heritage and not returned in accordance with the terms of that permit shall be deemed to have been illegally exported.” Finally, Article 5(4) provides that “any request made under paragraph 1 of this article shall contain or be accompanied by such information of a factual or legal nature as may assist the court or other competent authority of the State addressed in determining whether the requirements of paragraphs 1 to 3 have been met.”

In terms of bilateral agreements, as an example, the Agreement Between the Government of the Arab Republic of Egypt and the Government of the People’s Republic of China for Protection and Restitution of Stolen Cultural Property Transferred Illicitly from their Country of Origin provides that “upon express request of any of the Parties, the other Party shall take the appropriate legal steps at its disposal to recover and return of any cultural property found on its territory, which has been stolen, exported, or transferred illicitly from the territory of the requesting Party.” Article 4(4) of the agreement further provides that “if one of the Parties knows that any cultural property that are classified according to this Agreement, owed by the other Party, have been entered its territory illicitly, the same Party shall take related procedures to keep it until he notifies the other Party through diplomatic channels to begin the restitution procedures. Similarly, the Agreement between the Federal Council of the Swiss Confederation and the Government of the People’s Republic of China on Illicit Import and Export and Repatriation of Cultural Property provides that “one party to the agreement may file action for the repatriation of cultural property at the other party to the agreement in whose territory the cultural property was illicitly imported.” Article IV(3) of the agreement further provides that “claims for repatriation by a party to the agreement are subject to a statute of limitation of one year after its authorities gain knowledge of where and with whom the cultural property is located, at the latest, however, 30 years after the cultural property is illicitly exported.”

So far, China has had some success in recovering cultural relics via legal recourse. For example, on March 23, 2019, the Italy government returned 796 Chinese cultural relics and artworks back to the Chinese government. This return was the largest return of Chinese cultural relics and artworks in the past 20 years. It was also recently reported that the United States government will return to the Chinese government a number of Chinese cultural relics that were seized. This return was one of the results of the sixth round of high-level consultations on China-U.S. people-to-people exchanges at the end of June. In May 2015, French Foreign Minister Fabius visited China to return 28 artifacts from a French collector’s collection to China; and after the return of the bronze rabbit head, French luxury tycoon Pinault secretly returned four eastern Zhou-era mammoth gold heads to China in April 2015. In March 2015 the Australian government returned a Qing Dynasty viewing sound image to China, the first return since the Chinese and Australian governments signed a Memorandum of Understanding on heritage protection in 2009. Switzerland returned a Chinese Han Dynasty colored pottery which was seized by Swiss customs during the illegal flow of cultural property from the United Kingdom to Switzerland in 2005. This was the first return by the Swiss since the two parties signed the Agreement on illegal entry and exit of cultural property and their return on January 8, 2014

China also has some limited success in recovering cultural property via diplomatic negotiations. For example, in 2005, the French government returned four pieces of Raptor gold worth 1 million Euros (about 6.85 million yuan). According to a report by the British “Daily Telegraph” on July 6, 2005, the famous French luxury tycoon Pinot, who owns a series of brands such as Gucci, Saint Laurent, donated these 7th century BC works to the Paris-Germany Museum in 2000 as a friendly gesture to the then President Chirac. However, news later revealed that these cultural relics were lost when the noble tombs of the Zhou Dynasty in Gansu Province of China were robbed. China stated that this was part of a large number of lost cultural relics caused by the tide of grave robberies in the mid-1990s. According to reports, the Chinese government, through a French expert, issued a complaint about the cultural relics obtained from the tombs in mid-1990, but failed to obtain a response, but continued to pursue recourse efforts through diplomatic channels. In the end, according to the French “Art”, Pinault transferred four raptor gold heads to the Chinese Embassy in Paris, France in April 2005, without asking for any compensation. At the same time, French collector Christian Dédia, who bought another 28 cultural relics from the same reseller, handed them back to China on May 15th, 2005, which coincided with the time of French Foreign Minister Fabius’s visit to China. As a result, the French Ministry of Culture “retroactively revoked” the gift to the museum, returned the cultural relics to the donor, and the donor returned the cultural relics to China in accordance with Chinese requirements.

While recovery of cultural property via legal recourse is of course the ideal, the reality is that legal recourse remains an international problem. First, the terms of the 1954 Convention are very vague and thus very hard to enforce in practice. Additionally, there are two major “back doors” in the 1970 Convention and 1995 Convention: first, the traceability period was limited to a time period after the Conventions had come into effect and the loss period before that period would not be protected by the Convention. This has caused lots of difficulty for China in the recovery of its lost cultural property, as a significant number of cultural relics were lost prior to when the Conventions became effective. For



Stone gate of the front hall of Dingling tomb, Photo by CEphoto, Uwe Aranas, 3 June 2009, Creative Commons Attribution-Share Alike 3.0 Unported license.

example, in 2009, the Chinese government attempted to keep two heads of the Yuanmingyuan from auction and have filed claim in the France court, which was eventually rejected by the local court. Secondly, the 1970 Convention and the 1995 Convention apply only to signatory countries of both Conventions, and a lot of countries holding Chinese cultural property are not signatory countries to those Conventions. According to Wang Yunxia, a professor at the University of Chinese And the Institute of Cultural Heritage Law, “[a]lthough the international community has adopted in recent decades a number of conventions prohibiting the illegal circulation of cultural relics, affirming the spirit and principle that stolen and illegally exported cultural objects should be returned to their countries of origin, they apply only to the return of stolen and illegally exported cultural objects after the entry into force of the Convention, and only between signatory countries of the conventions. Yet, some of the major cultural property flows are not parties to these conventions. Additionally, if recourse is to be pursued in accordance with the domestic law of a signatory country in which the cultural object is located, there are also generally obstacles such as the statute of limitations, as well as the definition of the holder of good faith and its relief. Therefore, it is very difficult to solve the problem of the return of lost cultural relics to China directly through legal means.”²⁸⁰ In addition, according to Professor Huo Zhengxin of China University of Political Science and Law, another legal hurdle for recovery of lost cultural relics is because “the loss of cultural relics spans a long time, and the channels of loss are also diverse and complex. The complexity of the legal problems China faces in the pursuit of cultural relics in terms of evidence and application of laws is unmatched by any other cultural and logistics country.” Furthermore, the artificial obstacles set by the holders of lost cultural relics are also a stubborn barrier to prevent the return of China’s lost cultural relics. The Statement on the Importance and Value of the Global Museum, jointly published in December 2002 by 18 European and American museums, including the British Museum, the Louvre Museum in Paris, France, and the Metropolitan Museum of Art in New York, USA, is an international barrier. The Declaration, known as the 18-nation Convention, openly opposes the return of works of art, especially ancient cultural relics, to the countries of origin from which they were taken.²⁸¹

In terms of repurchase, as early as 2002, the State Administration of Cultural Relics set up a “national key collection of

²⁸⁰ The Return of Cultural Relics is an Irreversible International Trend, *supra* n. 233.

²⁸¹ *Id.*

precious cultural relics special funds” to buy representative, cultural relics of great artistic value or rare treasures. The Cultural Relics Protection Law, as amended in October of the same year, began to allow private collections of works of art, and the policy of treasure-keeping has also facilitated the return of lost cultural relics. In addition, China’s first non-governmental organization to rescue lost cultural relics, the Special Foundation to Rescue Lost Chinese Overseas Cultural Relics was established and launched the “national treasure” project to encourage the return of lost cultural relics in an organized and multi-channel manner. For example, the return of the Yuanmingyuan national treasure, twelve zodiac signs represented by a cow’s head, monkey’s head, tiger’s head and so on, was mostly bought at auction at a high price. Similarly, a northern Song dynasty calligrapher Mi Wei’s “Shanming” hand roll was repurchased for the price of 29.99 million Yuan. But these are just the tip of the iceberg compared to the tens of thousands of lost artifacts. According to Chinese industry experts, repurchase cannot be a long-term way to recover Chinese cultural relics overseas, especially with an abnormally large number of these relics and the gradual increase in the price of cultural relics and works of art. An ancient cultural relic can easily cost millions of yuan or tens of millions of yuan. Donations are only occasionally done by a few people, and for the time being, there are very few cultural relics returned by way of donation. Industry experts maintain that while diplomatic negotiations and legal recourse have been difficult, they should be the main way to return lost cultural relics back to China.

G. Funding sources for law enforcement and prosecutions related to cultural property

Historically, the funding for cultural property protection was governed by the Administrative Measures for the Use of Special Grants for National Key Cultural Relics Protection, the Measures for the Management of Special Funds for the Protection of Large Sites, and the Temporary Provisions on the Funding Arrangements for Special Appropriation Projects for Cultural Relics Protection. However, those measures and provisions were replaced by the Measures for the Administration of Special Subsidy Funds for the Protection of State Key Cultural Relics (Special Subsidy Funds Administration Measures) by The Ministry of Finance and Education (2013) No. 116 on June 9, 2013. Under the Special Subsidy Funds Administration Measures, special subsidy funds are special purpose-based subsidies set up by the central government to support the protection of key cultural relics throughout the country and promote the development of cultural relics.²⁸² The annual budget of the special funds shall be determined according to the overall plan, the annual work plan and the financial resources of the central government for the protection of cultural relics in the country. It was set up to fund: (1) national key cultural relics protection units protection, (2) protection of large sites, (3) protection of world cultural heritage, (4) archaeological excavations, (5) the protection of movable cultural relics, and (6) other projects approved by the Ministry of Finance and the State Administration of Cultural Relics.²⁸³ Those funds could be used for the following purposes: (1) the expenditure on the maintenance and protection of cultural relics, (2) expenditures on archaeological investigation and excavation of cultural relics, (3) expenditures on protective works, (4) expenditures on the protection of cultural relics technology, (5) expenditures on the exhibition of cultural relics, (6) expenditures on the construction of the management system for cultural relics protection, and (7) expenditure on the protection of other cultural relics.²⁸⁴ The scope of special subsidy funds does not include: land acquisition and demolition, basic construction, daily maintenance, emergency rescue, environmental remediation expenditure beyond the scope of protection of cultural relics, collection of cultural relics and expenditures for the central and local construction of key national museums at the national level.²⁸⁵ Special subsidy funds shall not be used to pay for all kinds of fines, donations, sponsorships, investments, etc., not for all kinds of wage and welfare expenses, not for debt repayment, or for other expenses prohibited by state regulations.²⁸⁶ The management and use of special funds adhere to the principle of “planning first, safeguarding focus, central subsidy, graded responsibility”, and where special funds are used to subsidize local areas, appropriate tilt shall be given to ethnic areas, remote areas and poor areas.²⁸⁷ Special funds for project management. The Ministry of Finance and the NCHA jointly established a pool of special funds.²⁸⁸

²⁸² Measures for the Administration of Special Subsidy Funds for the Protection of State Key Cultural Relics, art. 2.

²⁸³ *Id.*, art. 6.

²⁸⁴ *Id.*, art. 7.

²⁸⁵ *Id.*, art. 8.

²⁸⁶ *Id.*, art. 9.

²⁸⁷ *Id.*, art. 3.

²⁸⁸ *Id.*, art. 4.

IV. ADMINISTRATION AND MANAGEMENT OF CULTURAL PROPERTY

A. Institutions or ministries that manage cultural property

1. The NCHA has the responsibility of administering and managing cultural property. NCHA's main functions include developing museums, drafting and standardizing rules and regulations relating to museums and the identification, organization and investigation of cultural relics and resources.²⁸⁹ NCHA also coordinates the protection of cultural relics which involves the enforcement of laws, investigations of illegal transactions involving cultural relics, and cooperation with other departments to solve cases pertaining to cultural relics.²⁹⁰ The regulation of archaeological studies also falls under NCHA's umbrella through the coordination and organization of major preservation projects and other archaeological activities. The examination, verification, identification, and qualification of cultural relics is another NCHA function that allows for proper organization and guidance relating to cultural relics.²⁹¹

B. Changes in the entity holding these responsibilities and why the changes occurred

1. As discussed above, the NCHA currently manages cultural property in China. This responsibility first belonged to the State Bureau of Cultural Relics, which was created after the Chinese Civil War but languished during the political turmoil of the Cultural Revolution. In 1973, the State Cultural Relics Enterprises of Management Bureau was introduced and later became the State Bureau of Cultural Relics (SBCR) in 1988.²⁹² In 2003, the State Administration of Cultural Heritage was founded and became the central manager of cultural property in the Country. The SACH was created in response to the 2002 amendments to the Cultural Objects Law.²⁹³ Recently, the official English translation of SACH was changed to NCHA, but the Chinese name remains the same.

C. Description of the basic administrative structure/hierarchy through which an object passes

1. The NCHA is a subordinate agency to the Ministry of Culture of the People's Republic of China.²⁹⁴ NCHA has multiple internal divisions, which include: Foreign Affairs Liaison Division, Policy and Regulation Department, Inspectorate Division; Department of Conservation and Archeology, Museum and Social Heritage Division and Organ Party Committee.

V. REGISTRATION OF CULTURAL PROPERTY

A. Institutions or ministries that manages database or registry

1. The NCHA, provinces, autonomous regions, and municipalities are required to establish records and files in their designated area of control. However, all of this information must be reported to NCHA.²⁹⁵
2. Museums, libraries, and other institutions for the collection of cultural relics shall classify the cultural relics in their collection into different grades, compile files for the relics by them, establish a strict system of control, and submit them to the SACH.²⁹⁶
3. The Chinese system of categorization is one of the country's pitfalls in relation to cultural property. Legislators established a grading system which determines the different levels of protections. Cultural objects are classified as either "valuable" or "ordinary." However, the laws do not include

²⁸⁹ *State Administration of Culture Heritage*, STATE COUNCIL OF PEOPLE'S REPUBLIC OF CHINA. (Sept. 23, 2014) http://english.gov.cn/state_council/2014/10/06/content_281474992893400.htm.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *New Scholarship: Dedicated to Great Wall Conservation: A Portrait of Three Chinese Scholar*, 6 CHINA HERITAGE Q. (2006), http://www.chinaheritagequarterly.org/scholarship.php?searchterm=006_scholars.inc&issue=006.

²⁹³ Zhengxin Huo, *supra* n. 3.

²⁹⁴ NCHA, *supra* n. 220; MINISTRY OF CULTURE & TOURISM OF THE PEOPLE'S REPUBLIC OF CHINA, <https://www.mct.gov.cn/>

²⁹⁵ Law of the People's Republic of China on Protection of Cultural Relics, art. 15 (2007).

²⁹⁶ *Id.* art. 36.

substantive guidance as to how to differentiate between the two. In 2002, the grading system was not clarified, rather it was expanded. Valuable objects are now broken down further into one, two and three level cultural objects.²⁹⁷

- a. “Grade One” cultural objects are defined as “especially important for historic, artistic, and scientific values. These relics are prohibited from leaving Chinese borders.
 - b. “Grade Two” cultural objects are those cultural objects that have “important” cultural value.
 - c. “Grade three” cultural objects are “relatively important” to China’s cultural heritage.
 - d. Ordinary objects are those that have “certain historic artistic and scientific value.”
4. The issue with this system arises from the fact that the categorization of these objects reflects administrative responsibility. They determine what level of government is responsible for protection of such property and the vagueness of classification leads to a lack of certainty.

B. Is there public access to registries/databases? Are they fee based? Is there domestic and international access?

Yes. The registries/databases can be accessed by the public, both domestic and international, for free.

C. Are there specific registration requirements for commercial property (state-owned or private) held as heirlooms or as art collections?

1. The registration requirements and enforceability is not known.
2. The associated penalties are not known.

VI. DOMESTIC PRIVATE OWNERSHIP AND TRANSFER BY INHERITANCE, GIFT, OR SALE

A. Is private ownership of cultural property permitted?

Private ownership of cultural property was permitted in 2002 and was seen as a very big change in Chinese law. The Chinese government determined that protection of cultural heritage was of a high priority and realized that the inappropriate commercialization and over-exploitation of cultural objects was a serious threat. The 2002 amendments allowed for officially sanctioned cultural objects shops and auction enterprises to aid in the cataloging and trafficking of cultural property. These enterprises now share similar requirements as administrative officials and are permitted to examine and verify each cultural object before a sale or exchange. The cultural object shops must keep records of cultural objects they purchase, auction, or sell.

B. Is inheritance of cultural property or are gifts of cultural property permitted?

Article 50 allows for citizens and legal persons to hold cultural objects obtained through legal inheritance or gift.²⁹⁸

C. Is transfer by sale of privately owned cultural property permitted?

Private transactions were partially legalized in 2002. This legislation is very limited. It generally prohibits private parties from engaging in commercial activities involving cultural property. This means that only cultural stores and auctions enterprises are allowed to undertake commercial activities. In other words, private parties are not allowed to buy or sell cultural objects even if the properties are legally privately owned unless they are conducted through officially sanctioned cultural shops and auction enterprises.

²⁹⁷ <http://orcp.hustoj.com/wp-content/uploads/2016/01/2015-Legal-protection-of-cultural->

²⁹⁸ Law of the People’s Republic of China on Protection of Cultural Relics, art. 50 (2007).



Mausoleum of Mao Zedong, Beijing, China, photo by Diego Delso, 19 February 2006, license CC BY-SA.

VII. PREEMPTION AND CONFISCATION

A. Are there current or prior laws that result in the confiscation or seizure of private property? Under what circumstances?

If any of the following occurs the State has the right to confiscate and fine based on the amount of unlawful gains

- (1) transferring or mortgaging State owned immovable cultural relics or making them enterprise assets for business operations
- (2) transferring or mortgaging irremovable cultural relics not owned by the State to a foreigner, or
- (3) without authorization, changing the purpose of use of a site protected for State-owned cultural relics.

B. Are there any specific triggers for transfer of ownership to the state of privately owned property?

Article 58 of the Law on Protection of Cultural Relics permits the Chinese government to buy any cultural relic submitted for mandatory inspection before a sale, and if the item is not eligible for sale, the government will buy back the property (usually at a price lower than fair market value).²⁹⁹

²⁹⁹ Michael L. Dutra, *How Much Is That Ming Vase in The Window? Protecting Cultural Relics in the People's Republic of China*, 5 *ASIAN-PACIFIC L. & POL'Y J.* (2004).

C. Is there compensation to the owner if an item is seized?

No.

D. What happens to seized property?

Not available.

E. Is there data on the financial value of seized property?

Not available.

VIII. RELIGIOUS HERITAGE AND COMMUNITY PROPERTY**A. Are objects of religious heritage/religious significance included or excluded from state control? If excluded, is there any management?**

While religious heritage is protected under the Chinese Cultural Property Law, China does not recognize religious heritage as a separately protected category. Accordingly, Chinese law does not provide special protection for religious heritage or other properties of religious significance. For example, there is no special law related to the protection of family bibles, marriage documents, letters, photographs, or diaries. Chinese law further does not specify if any objects of religious heritage/religious significance are to be included or excluded from state control.

B. Do national property laws include community-owned artifacts, for example, objects used in religious rituals or ceremonies by a specific religion (minority or majority religion)?

The law recognizes cultural institutional ownership of cultural property. In China, institutions for the collection of cultural relics may purchase relics and accept donated cultural relics. Article 37 of the *Law of the People's Republic of China on Protection of Cultural Relics* states that "institutions for the collection of cultural relics may obtain cultural relics by the following means: (1) purchasing; (2) accepting donations; (3) exchanging according to law; or (4) other means as provided for by laws and administrative rules and regulations."³⁰⁰ Article 38 of the law states that "without approval, no unit or individual may, through transfer, obtain cultural relics in the collection of cultural institutions" and Article 43 states that "the institution for the collection of the cultural relics that obtains cultural relics through lawful transfer, exchange or borrowing of the cultural relics in the collection of State-owned cultural institutions may give a reasonable sum of compensation to the institution for the collection of cultural relics that provides it with the cultural relics."³⁰¹ The law was published on November 19, 1982 and amended for the second time in accordance with the Decision on Amending the Law of the People's Republic of China on Protection of Cultural Relics, adopted at the 31st Meeting of the Standing Committee of the Tenth National People's Congress on December 29, 2007.

C. Are there any export restrictions on religious property?

Chinese Laws do not categorize religious property as a separate category. They have vague and general classifications, discussed above.

³⁰⁰ *Id.* art. 37.

³⁰¹ *Id.* art. 43.

IX. ARCHAEOLOGICAL WORK

A. Unauthorized or Criminal extraction of archaeological objects and looting

1. Domestic Laws that Prohibit Unauthorized or Criminal Extraction of Archaeological Objects and resulting Civil and Criminal Penalties

The Constitution of the People's Republic of China, as amended (the "Constitution"), sets forth aspirational declarations including the protection of archaeological objects. Article 22 of the Constitution states that it is the State's responsibility to protect "important items of China's historical and cultural heritage."³⁰² In its efforts to provide more specific guidelines in protecting cultural relics and archaeological objects, in 1982, the Standing Committee of the National People's Congress enacted Law of the People's Republic of China on Protection of Cultural Relics (the "Cultural Relics Protection Law").³⁰³ The Cultural Relics Protection Law serves as the central piece of legislations that address cultural relics protection.³⁰⁴ Regulations and rules were promulgated accordingly to complement the Constitution and the Cultural Relics Protection Law, including Regulation for the Implementation of the Cultural Relics Protection Law of the People's Republic of China³⁰⁵, in order to construct a comprehensive legal system for protecting cultural relics. In forming a legal system for protecting cultural relics, the government has imposed both criminal and civil liabilities on wrongdoers. As for civil penalties, Article 65 of the Cultural Relics Protection Law sets forth civil penalty for "[a]nyone who violates the present Law by causing losses of or damages to cultural relics."³⁰⁶ Article 32 of the Cultural Relics Protection Law further imposes an affirmative duty on anyone who discovers cultural relics by stating that "any entity or individual that discovers cultural relics shall protect the scene and immediately report the discoveries to the local department of cultural relics administration and the discoveries belong to the State."³⁰⁷ The Regulation for the Implementation of the Cultural Relics Protection Law of the People's Republic of China (the "Regulation for the Implementation of the Cultural Relics Protection Law"), which was formulated to implement the Cultural Relics Protection Law, prescribes administrative, civil, and criminal liabilities. The Regulation for the Implementation of the Cultural Relics Protection Law specially protects cultural relics such as "sites related to revolutionary history, memorial buildings, sites of ancient culture, ancient tombs, ancient architectural structures, cave temples and stone carvings."³⁰⁸ Moreover, the Regulations for the Implementation of the Cultural Relics Protection Law add more comprehensive and stricter procedures such as requiring identification labels and export licenses and implementing a registration system to detect and deter illegal activities.³⁰⁹

Criminal law addresses issues relating to looting and destruction of cultural relics. The Criminal Law of the People's Republic of China (the "Criminal Law") used to prescribe the death penalty for looting archaeological objects. Article 328 of Section 4 of the Criminal Law under the title "Crimes against Control of Cultural Relics" prescribed death penalty for certain crimes related to looting archaeological sites and archaeological extractions³¹⁰, but such provisions were removed in the 8th Amendment of the Criminal Law. The amended Criminal Law created gradations of criminal penalties applicable to offenses of varying degrees. For more severe crimes, such as looting of a key cultural property or archaeological site, multiple offenses, or being the leader of a criminal group, the criminal will be sentenced to imprisonment of not less than 10 years or even life imprisonment and will pay a fine or forfeit the property. For less severe crimes, the criminal will be sentenced to imprisonment of not less than 3 years but not more than 10 years and pay a fine. For minor crimes, the criminal can be sentenced to imprisonment of not more than 3 years or be placed in criminal detention and pay a fine.³¹¹ The Supreme People's Court and the Supreme People's Procuratorate interpreted the relevant provisions of the Criminal Law of the People's Republic of China, the Criminal Procedure Law of the People's Republic of China and the Cultural Relics Protection Law of the People's Republic of China to prohibit smuggling, theft and illegal trade of cultural relics, further reaffirming the role that the Criminal Law plays in the protection of cultural relics.³¹² In an effort to remove unreasonably

302 Constitution of The People's Republic of China [中华人民共和国宪法], amended in accordance with the Amendments to the Constitution of the People's Republic of China adopted at the First Session of the 13th Nat'l People's Congress on Mar. 11, 2018.

303 Law of the People's Republic of China on Protection of Cultural Relics (2007).

304 Cultural Relics Protection Law of the People's Republic of China (2017 Amendment).

305 The Regulation for the Implementation of the Cultural Relics Protection Law of the People's Republic of China [中华人民共和国文物保护法实施条例] (2003), http://www.gov.cn/gongbao/content/2017/content_5219151.htm.

306 *Id.* art. 65.

307 Law of the People's Republic of China on Protection of Cultural Relics art. 32 (2007).

308 *Id.* art. 2(1).

309 *Interpreting the Regulation for the Implementation of the Cultural Relics Protection Law of the People's Republic of China* [解读《中华人民共和国文物保护法实施条例》], HAIKOU TOURISM CULTURE & RADIO & TV SPORTS BUREAU (May 5, 2019) <http://lwj.haikou.gov.cn/xxgk/zwview/467.html>.

310 The Criminal Law of the People's Republic of China [中华人民共和国刑法], art. 328 (1997).

311 *Id.*

312 Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in the Handling of Criminal Cases Concerning Hampering the Administration of Cultural Relics [两高关于办理妨害文物管理等刑事案件适用法律若干问题的解释], SPP.GOV.CN (Dec. 31, 2015), https://www.spp.gov.cn/spp/sfjs/201802/t20180201_363641.shtml.



Tomb of the General, thought to be the burial tomb of King Gwanggaeto or his son King Jangsu, both former Kings of Goguryeo, Ji'an, Jilin province, China, Photo by Prcshaw, 4 October 2018, Creative Commons Attribution-Share Alike 4.0 International license.

harsh penalties, the Interpretation has created gradation in penalties that corresponds to the severity of punishment.³¹³

Notably, in constructing a legal system that offers comprehensive protection and prohibits crimes relating to looting of archeological sites, the Departments in charge of administering rules for protecting cultural relics at various levels (national, provincial and local) promulgated rules to specifically address issues relating to the looting of the underwater cultural relics.³¹⁴

Opinions from central and local governments: In the State Council of the People's Republic of China's Opinion on the Task of Strengthening Cultural Relics (Protection), the State Council stressed that the State needs to: 1) establish a national registration system for cultural relics; 2) strengthen protection of immovable cultural relics; 3) protect cultural relics protection during construction and development of cities; 4) improve administrative systems for cultural relics protection; 5) strengthen protection of movable cultural relics; 6) strengthen the security protection for cultural relics; and 7) draft policies and measures to encourage the public to participate in cultural relics protection.³¹⁵

The Shanghai government, in its Opinion on the Task of Strengthening Cultural Relics Work, emphasizes that the protection of cultural resources is a vital part of propagating the core socialist values and outlined plans for implementing changes including enforcement of cultural relics protection.³¹⁶ The Opinion on the Task of Strengthening Cultural Relics Work references to President's Xi Jinping's plan of revitalizing Chinese culture and achieving the Chinese dream, to which the promotion of core cultural values and preservation of cultural resources are key.³¹⁷ In addition to the efforts of large cities like Shanghai, other local governments (city, county, township, and village), observing principles promulgated by the central government, issued measures and methods to protect cultural relics. Examples

³¹³ *Id.*

³¹⁴ Regulations of the People's Republic of China Concerning Administration of the Protection of Underwater Cultural Relics, art. 4 (1989).

³¹⁵ The State Council of the People's Republic of China's Opinion on the Task of Strengthening Cultural Relics (Protection), SCIO.GOV.CN (March 8, 2016), <http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/37601/38374/xgzc38380/Document/1630049/1630049.htm>.

³¹⁶ The Shanghai Government's Opinion on the Task of Strengthening Cultural Relics Work [市政府关于进一步加强文物工作的实施意见], SHANGHAI.GOV.CN. (June 2, 2017) <http://www.shanghai.gov.cn/nw2/nw2314/nw2319/nw12344/u26aw52574.html>.

³¹⁷ The Interpretation of Shanghai Government's Opinion on the Task of Strengthening Cultural Relics Work [《上海市人民政府关于进一步加强文物工作的实施意见》政策解读, SHANGHAI.GOV.CN. (June 2, 2017) <http://www.shanghai.gov.cn/nw2/nw2314/nw2319/nw41893/nw42231/u21aw1234297.html>.

include Ürümqi in Xinjiang, Langfang in Hebei, and Shigatse in Tibet.³¹⁸

2. Enforcement of Domestic Laws

The State Administration of Cultural Heritage, State Administration of Cultural Heritage, Department of Cultural Relics Administration under the State Council are national enforcement agencies. The corresponding agencies at provincial and local levels also enforce the laws and regulations to protect cultural relics. According to a set of rules, “[l]ocal People’s Governments at various levels shall be responsible for the work of protecting cultural relics in their respective administrative jurisdictions. The departments of local People’s Governments at and above the county level that undertake the protection of cultural relics shall supervise and administer cultural relics protection within their respective administrative jurisdictions.”³¹⁹ However, conflict exists in the enforcement at the central and local levels because “many provinces, autonomous regions, and local governments have taken it upon themselves to pass their own cultural property policies, which often conflict with those that the Ministry of Culture and the State Bureau of Cultural Relics promulgate.”³²⁰

B. The State’s Management of Cultural Property

The State has been implementing plans to both protect cultural property and to promote Chinese cultural history. As one example of enforcement actions by the State, the National Cultural Heritage Administration issued an order to demand China XiLingYinShe Auction Co. Ltd., a major broker of fine arts and collectibles in China, to suspend auctions on items which the Administration suspected to be cultural objects extracted illegally from underground.³²¹ After two rounds of inspection, the auction house was asked to remove 29 items from the schedule and was allowed to proceed with the other five items that were not deemed to be extracted cultural objects.³²² One main difficulty in enforcement actions arises from the lack of clear rules as to what objects qualify as cultural objects.³²³ Moreover, even legally obtained cultural objects can lack corresponding documents and certificates to evidence their legitimacy because it is difficult to keep track of transactions without a national or provincial database.³²⁴ Chinese government officials and professionals working in the auction market share the concern about the lack of a uniform database even if China currently has a database for the reporting of stolen cultural objects.³²⁵

On the other hand, the Chinese government has been taking affirmative actions to promote Chinese culture by meaningfully organizing displays of cultural objects and constructing national cultural sites. As early as 2003, the Chinese government designed projects aiming to strengthen cultural property protection and to improve the conditions of cultural relics.³²⁶ Recently on December 20, 2019, the General Office of the Communist Party of China (“zhong ban”) and General Office of the State Council (“guo ban”), co-issued “Yangzi River, Grand Canal and Long March National Cultural Park Construction Plan” (the “Plan”) to “let the archeological objects, history and culture speak” as the Plan will connect major sites of Chinese cultural history.³²⁷ The Plan, integral to President Xi Jinping’s strategy to explore and use China’s rich cultural history and possession of cultural objects to tell a national story of industry, perseverance, revolutionary spirit and gratitude for prior generations’ sacrifice.³²⁸

X. PRIVATE COLLECTIONS OF CULTURAL PROPERTY

A. Are there private collections of cultural property?

In China, the State allows private collection of cultural property. Private archaeological projects are permitted if the

318 Various examples are on the Chinese Government’s Rule by Law Information Website in the past, accessible via Wayback Machine, https://archive.org/web/:http://www.chinalaw.gov.cn/art/2018/5/16/art_15_208219.html; http://www.chinalaw.gov.cn/art/2012/6/21/art_15_196646.html; http://www.chinalaw.gov.cn/art/2017/3/8/art_15_196097.html.

319 Law of the People’s Republic of China on Protection of Cultural Relics art. 8 (2007).

320 Michael L. Dutra, Sir, *How Much is That Ming Vase in The Window? Protecting Cultural Relics in the People’s Republic of China*, 5 *ASIAN-PACIFIC L. & POL’Y J.* 62 (2004).

321 *Objects for Auction Resembling Extracted Cultural Objects, XiLingYinShe Removed Auctions on 29 Objections* [疑似拍卖出土文物“西冷印社”撤掉29个标的], *XinHuaNews* (Dec.22, 2019), http://www.xinhuanet.com/2019-12/22/c_1125373655.htm.

322 *Id.*

323 *Id.*

324 *Id.*

325 *Id.*

326 The Measures for the Administration of Cultural Relics Protection Projects [文物保护单位工程管理办法], arts. 1-3 (2003).

327 *Let the Archeological Objects, History and Culture Speak* [让文物说话 让历史说话 让文化说话], *PEOPLE.CN* (Dec. 20 2019), <http://culture.people.com.cn/n1/2019/1220/c1013-31514821.html>.

328 *Id.*

findings are transferred to the State and are conducted by experts for research purpose.³²⁹ Further, Article 38 of Regulation for the Implementation of the Cultural Relics Protection Law of the People's Republic of China authorizes legal collections of cultural property.³³⁰ Private collections of cultural property including antiquities are common in China. Articles advertising exhibitions of privately collected cultural property are available at the official website of the State Administrative of Cultural Heritage, showing the state's support of legal private collections. However, private exploration of archaeological sites without proper means to preserve cultural relics for the purpose of commercial benefit is illegal.³³¹

As the Chinese governments regards private legal collection of cultural objects as a means to promote a sense of appreciation of Chinese culture and the arts, the Chinese government has attempted to regulate the markets to facilitate private transactions. In China, there are more than 3000 public marketplaces for cultural property and one million stores, whose transactions totaled about 50 billion yuan in 2017.³³² Unfortunately, fake cultural objects have permeated the markets and reduced the confidence of private collectors.³³³ The leading lawyer representing the National Museum of China pointed out that certain special interest groups have monopolized the valuation and rights to auction cultural objects in the Chinese public markets.³³⁴ Moreover, such interest groups employed unscrupulous tactics to suppress the prices of valuable cultural objects in the public markets so they can purchase them at lower prices to realize a larger profit when they sell the objects. Some sales are thought to constitute illicit smuggling to buyers abroad.³³⁵ To reduce the numbers of fake cultural objects in the markets and to curb illegal market manipulation and smuggling, the Chinese government incorporated cultural property protection into its National Cultural Property Development Thirteenth Five-Year Plan ("Guojia Wenwu Shiyefazhan Shisanwu Guihua") and states that it will continue its efforts to develop laws and regulations protecting cultural property.³³⁶

B. Are there private museums?

"Driven by the expanding number of Chinese billionaire art investors hoping to leave a cultural legacy, government and municipal policy, and the financial and security disincentives that hinder donation of private art to public facilities, scores of spectacular new museums are being built each year at the cost of hundreds of millions of dollars."³³⁷

C. Are private museums popular?

Private museums are very popular and receive publicity. There were about 864 private museums in China by 2014. Prominent examples include Long Museum, Nanjing Sifang Art Park, and Minsheng Museum.³³⁸

D. Is it a status issue, as to who can privately own cultural property?

There is no specific limitation found on who can own private cultural property. Interestingly, in China, many wealthy Chinese are moving their assets out of China and washing their money through purchases of fine art. "As China's vast \$15 billion art industry grows, it becomes easier for criminals to camouflage illegal behavior."³³⁹

XI. PUBLIC MARKETPLACE FOR CULTURAL PROPERTY

A. Online auctions

In a Notice co-issued by the State Administration of Cultural Heritage and the State Administration for Industry and

³²⁹ Law of the People's Republic of China on Protection of Cultural Relics art. 75(4) (2007).

³³⁰ Regulations for the Implementation of the Cultural Relics Protection Law of the People's Republic of China, art. 38 (2003).

³³¹ *Id.* art. 39(3).

³³² *Chaos in the Public Markets of Cultural Property: Fakes Permeate the Markets, Valuations and Auctions Controlled by Special Interest Groups* [民间收藏乱象: 假货多 鉴定拍卖遭利益集团操控], CCTV.COM (Apr. 5, 2017), <http://news.cctv.com/2017/04/05/ART11tQV6bvOa6pAhXdEgJkW170405.shtml>.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ Georgia McCafferty, *China's Private Art Museums: Icons or Empty Vanity Projects?*, CNN (Dec. 1, 2016), <https://www.cnn.com/style/article/china-private-art-museums/index.html>.

³³⁸ Georgia McCafferty, *China's private art museums: Icons or empty vanity projects?*, CNN, (December 1, 2016) <https://www.cnn.com/style/article/china-private-art-museums/index.html>.

³³⁹ Sophia Yan, *Chinese Snap Up Fine Art for Use in Laundering Schemes*, CNN, (Feb. 21, 2014) <https://money.cnn.com/2014/02/20/news/economy/china-art-laundering/index.html>.



Door panels, Forbidden City, Beijing, China, photo by Diego Delso, 19 February 2006, license CC BY-SA.

Commerce, the government outlined its measures and goals on how to regulate cultural property markets. Specifically, the government mentioned it would investigate websites that manage and sell fake cultural relics.³⁴⁰

China has a growing market of cultural relics. However, 1) China lacks scholarship on cultural relics and 2) the reality of cultural relics in commerce is incompatible with the current laws and regulations. Scholars are working on developing an area of scholarship in distinguishing cultural relics that belong to the State (that cannot be traded) and cultural items that can be traded.³⁴¹

XII. APPLICATION OF INTERNATIONAL CULTURAL PROPERTY LAWS

A. Does China apply the same export restrictions that it places on its own cultural property to the cultural property of other nations? Does China allow domestic trade in cultural property of other nations which have restrictive cultural property laws?

A person will be punished for selling cultural relics to a foreigner under Article 325 of the Criminal Law. China signed Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 and is obliged to “to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property.” However, enforcement is uncertain.

B. Does China participate in international efforts to preserve cultural property in other nations?

1. UNESCO projects?

³⁴⁰ Notice on Policing Cultural Property Trade Market, STATE ADMIN. OF CULTURAL HERITAGE, (2017), http://www.sach.gov.cn/art/2017/8/2/art_8_142987.html.

³⁴¹ The First Seminar on How to Solve the Problems in the Cultural Property Mark, BBTNews (Aug.17, 2017) <http://www.bbtnews.com.cn/2017/0817/206872.shtml>.

CONVENTION	DATE OF DEPOSIT	TYPE OF DEPOSIT
Convention concerning the Protection of the World Cultural and Natural Heritage. Paris, 16 November 1972.	12 December 1985	Ratification
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, 14 November 1970.	28 November 1989	Acceptance
Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention. The Hague, 14 May 1954.	05 January 2000	Accession
Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954.	05 January 2000	Accession
Convention for the Safeguarding of the Intangible Cultural Heritage. Paris, 17 October 2003.	02 December 2004	Ratification
Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Paris, 20 October 2005	30 January 2007	Ratification

2. World Monuments Fund projects?

China participates in World Monuments Fund projects.³⁴²

XIII. TRENDS AND THE FUTURE IMPACT OF PLANS AND INITIATIVES

A. Museum trends

1. China has been experiencing fast museum growth since 2009. “The number of museums being built in China by both the government and private individuals has exploded in recent years, from 2,601 in 2009 to 4,164 in 2014, a 60% increase in just five years, according to the China Museums Association.”³⁴³
2. Reasons
 - a. Government policy. “China’s parliament, the National People’s Congress, has named museum growth as a goal in both of its five-year plans since 2010.” “Private and industry-based art collectors often receive favorable government real estate deals for their museums.”
 - b. Vanity of founders. Founders have a desire to display their art possessions. “China lacks the philanthropic culture that exists in the U.S. and Europe, art collectors there don’t receive financial incentives such as tax deductions to donate their collections to public galleries.”

B. Have there been changes in national policy on cultural heritage? What does this mean for China? Is China showing that it values cultural property more or less with its policies?

New cultural programs and an emphasis on cultural preservation in China will help raise general awareness of the cultural property preservation. President Xi implemented cultural programs in China to develop a socialist culture and boost national identity. “The Chinese government has been strict in enforcing the Law on the Protection of Cultural Relics. In 2017, the State Administration of Cultural Heritage investigated 314 cases relating to cultural relic mismanagement and 178 officials were held accountable and punished. Meanwhile, China has shown zero tolerance to theft and trade in cultural relics. Last

³⁴² *World Monuments Fund in China*, WORLD MONUMENTS FUND (2006) <https://www.wmf.org/publication/world-monuments-fund-china>.

³⁴³ Georgia McCafferty, *China’s Private Art Museums: Icons or Empty Vanity Projects?*, CNN, Dec. 1, 2016, <https://www.cnn.com/style/article/china-private-art-museums/index.html>.

year, more than 100 gangs have been exposed and nearly 1,000 arrests were made.”³⁴⁴

C. Have there been changes since the 1972 UNESCO Convention?

Since “the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage established the World Heritage List and requirements for each country to identify and protect its cultural and natural heritage through its integration in regional planning and the establishment of relevant policy and resources towards that end,” China has been making changes to “formalize the practice and regulation of cultural heritage protection and management.” The efforts include the Measures for the Administration of China’s World Cultural Heritage Monitoring and Inspections, the State Administration of Cultural Heritage Freedom of Information Annual Work Report for 2013, Beijing Development Plan for Standardizing the Protection of Cultural Heritage (2014-2020), and the Conservation Plan for Twenty-Five Old City Historical and Cultural Conservation Areas. “Chinese lawmakers take seriously the protection of their cultural heritage” and these proposals may positively impact the system.³⁴⁵

D. Are there draft laws or proposals that signal significant change or differing positions?

The Supreme People’s Court and the State Administration of Cultural Heritage signed an agreement to strengthen the protection of cultural property. The President of the Supreme People’s Court emphasized that 1) cultural relics are an important national cultural resource; 2) Chinese courts at all levels need to strengthen protection for cultural relics; 3) Chinese courts need to use new technology to strengthen research on legal protection of cultural relics.³⁴⁶

The Supreme People’s Court emphasized that it would strengthen enforcement of cultural property protection laws to prevent theft and smuggling of cultural relics and it would try to return cultural relics from foreign countries to China.³⁴⁷ State Administration of Cultural Heritage will publish a database of looted cultural relics overseas to prevent the sale of stolen objects.³⁴⁸

E. Are there broader economic or political initiatives? What’s the motivation behind these policies?

The Silk Road International Cultural Expo was held in Dunhuang, a city along the Silk Road. The director of Protection Center of China’s Intangible Heritages of Humanity stated that China would need more cultural projects to preserve its rich cultural heritage.³⁴⁹

APPENDIX I

Chinese Culture Property on the UNESCO World Heritage List

- 1987** Addition to the World Heritage List (Cultural):
- Imperial Palaces of the Ming and Qing Dynasties in Beijing and Shenyang
 - Mausoleum of the First Qin Emperor
 - Peking Man Site at Zhoukoudian
 - The Great Wall
- Addition to the World Heritage List (Natural/Cultural)
- Mount Taishan

³⁴⁴ *China Legislates to Protect Culture*, CHINA DAILY (Mar. 26, 2018), <http://www.chinadaily.com.cn/a/201803/26/WS5ab8996da3105cdcf65144fe.html>.

³⁴⁵ Jonathan S. Bell, *Introduction to the Cultural Heritage Issue*, 48 CHINESE L. & GOV’T, (2016).

³⁴⁶ *Strengthen Legal Protection and Use of Cultural Relics*, LEGAL DAILY (Apr. 18, 2018) http://www.legaldaily.com.cn/Culture/content/201804/18/content_7523868.htm?node=80488.

³⁴⁷ *The Supreme People’s Court of China will Strengthen Enforcement to Protect Cultural Relics*, SINA (Apr. 20, 2018) <http://www.asiaec.com/gundongxinwen/15241868496171.html>.

³⁴⁸ *Database of Looted Relics Overseas is Published*, CHINA DAILY (Apr. 17, 2018) <http://www.chinadaily.com.cn/a/201804/17/WS5ad5b2bea3105cdcf6518d45.html>.

³⁴⁹ *Inheriting Silk Road Heritage Calls for Creative Ideas*, CRIENGLISH, (Sept. 30, 2016) <http://english.cri.cn/7146/2016/09/30/3481s941612.htm>.



Lijiang, Yunnan, China: Naxhi people carrying the typical baskets of the region; scene from a public performance in Jade Dragon Snow Mountain Open Air Theatre. Photo by CEphoto, Uwe Aranas, 2 April 2012, Creative Commons Attribution-Share Alike 3.0 Unported license.

- 1990** Addition to the World Heritage List (Natural/Cultural):
Mount Huangshan
- 1992** Addition to World Heritage List (Natural):
Huanglong Scenic and Historical Interest Area
Jiuzhaigou Valley Scenic and Historical Interest Area
Wulingyuan Scenic and Historic Interest Area
- 1994** Addition to the World Heritage List (Cultural):
Ancient Building Complex in the Wudang Mountains
Historic Ensemble of the Potala Palace, Lhasa
Mountain Resort and its Outlying Temples, Chengde
Temple and Cemetery of Confucius and the Kong Family Mansion in Qufu
- 1996** Addition to the World Heritage List (Cultural):
Lushan National Park
Addition to the World Heritage List (Natural/Cultural)
Mount Emei Scenic Area, including Leshan Giant Buddha Scenic Area
- 1997** Addition to the World Heritage List (Cultural):
Ancient City of Ping Yao

- Classical Gardens of Suzhou
Old Town of Lijiang
- 1998** Addition to the World Heritage List (Cultural):
Summer Palace, an Imperial Garden in Beijing
Temple of Heaven: an Imperial Sacrificial Altar in Beijing
- 1999** Addition to the World Heritage List (Cultural):
Dazu Rock Carvings
Addition to the World Heritage List (Natural/Cultural)
Mount Wuyi
- 2000** Accession to Convention for the Protection of Cultural Property in the Event of Armed Conflict
- 2000** Addition to the World Heritage List (Cultural):
Classical Gardens of Suzhou
Ancient Villages in Southern Anhui – Xidi and Hongcun
Historic Ensemble of the Potala Palace, Lhasa
Imperial Tombs of the Ming and Qing Dynasties
Longmen Grottoes
Mount Qingcheng and the Dujiangyan Irrigation System
- 2001** Addition to the World Heritage List (Cultural):
Historic Ensemble of the Potala Palace, Lhasa
Yungang Grottoes
- 2003** Addition to the World Heritage List (Cultural):
Cultural Landscape of Honghe Hani Rice Terraces
Imperial Tombs of the Ming and Qing Dynasties
Addition to the World Heritage List (Natural): Three Parallel Rivers of Yunnan Protected Areas
- 2004** Addition to the World Heritage List (Cultural):
Capital Cities and Tombs of the Ancient Koguryo Kingdom
Imperial Palaces of the Ming and Qing Dynasties in Beijing and Shenyang
Imperial Tombs of the Ming and Qing Dynasties
- 2005** Addition to the World Heritage List (Cultural): Historic Centre of Macao
- 2006** Addition to World Heritage List (Natural): Sichuan Giant Panda Sanctuaries - Wolong, Mt Siguniang and Jiajin Mountains
- 2007** Addition to World Heritage List (Cultural):Kaiping Diaolou and Villages
Addition to World Heritage List (Natural): South China Karst
- 2008** Addition to World Heritage List (Cultural):Fujian Tulou

- 2008** Bilateral Agreement with Greece: Memorandum of Understanding on Cooperation in the prevention of theft, illegal excavation and illicit import and export of cultural property. Law No. 3914/2011 (Greek and English)
Addition to World Heritage List (Natural): Mount Sanqingshan National Park
- 2009** Addition to World Heritage List (Cultural): Mount Wutai
- 2009** January 14 Memorandum of Understanding between the Government of the United States and the Government of the People's Republic of China Concerning the Imposition of Import Restrictions on Categories of Archaeological Material from the Paleolithic Period through the Tang Dynasty and Monumental Sculpture and Wall Art at Least 250 Years Old
- 2009** Bilateral Agreement between the US and China Designated List
- 2010** Addition to World Heritage List (Cultural): Historic Monuments of Dengfeng in "The Centre of Heaven and Earth"
Addition to World Heritage List (Natural): China Danxia
- 2011** Addition to World Heritage List (Cultural): West Lake Cultural Landscape of Hangzhou
- 2012** Addition to World Heritage List (Cultural): Site of Xanadu
Addition to World Heritage List (Natural): Chengjiang Fossil Site
- 2013** Agreement between the Federal Council of the Swiss Confederation and the Government of the People's Republic of China on Illicit Import and Export and Repatriation of Cultural Property (English, UNESCO database) [\(French translation\)](#) (French, UNESCO database)
Addition to World Heritage List (Natural): Xinjiang Tianshan
- 2014** January 8 (+5 years) 2009 Bilateral Agreement or Memorandum of Understanding between the US and China "Revised to Clarify that the Agreement applies to Monumental Sculpture and Wall Art At Least 250 Years Old as of January 14, 2009."
- 2014** Bilateral Agreement between the US and China Designated List
- 2014** Addition to the World Heritage List (Cultural):
Silk Roads: the Routes Network of Chang'an-Tianshan Corridor
The Grand Canal
Addition to World Heritage List (Natural): South China Karst
- 2014** "By the end of February 2014, China has signed bilateral agreements on the protection of cultural property from theft, illegal excavation and illicit traffic with 28 countries. There are two points, inter alia, which are worthy of special notice: First, these countries include not only source nations, such as Greece and Peru, but also market nations, such as Switzerland and Australia;"
- 2015** Addition to World Heritage List (Cultural): Tusi Sites
- 2016** Addition to World Heritage List (Cultural): Zuojiang Huashan Rock Art Cultural Landscape
Addition to World Heritage List (Natural): Hubei Shennongjia
- 2017** Addition to World Heritage List (Cultural): Kulangsu, a Historic International Settlement
Addition to World Heritage List (Natural): Qinghai Hoh Xil
- 2018** Addition to World Heritage List (Natural): Fanjingshan
- 2019** Addition to World Heritage List (Culture): the Archaeological Ruins of Liangzhu City

Addition to World Heritage List (Natural): Migratory Bird Sanctuaries along the Coast of Yellow Sea-Bohai Gulf of China (Phase I)

Xi'an, China: War chariots of the Terracotta Army in the exhibition hall of the Museum of the Terracotta Army, 26 March 2012, Photo by CEphoto, Uwe Aranas, Creative Commons Attribution-Share Alike 3.0 Unported license.

