

## **CASE NOTE**

# **Take the Long Way Home: The Recovery of 32 Chinese Gold Foils from France**

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**Abstract:** The rational and efficient recovery of Chinese archaeological objects from market nations is a crucial issue that is confronting the Chinese government. Although the 1970 UNESCO Convention was accepted in China in 1989, the destruction of Chinese archaeological sites through illicit excavations and illegal trade has increased, rather than diminished, in the nearly 30 succeeding years. For a better understanding of the challenges that confront the Chinese government, this article provides a case study approach to analyze the case of gold foils stolen from the Eastern Zhou tombs in the Dapuzishan Mountain Region of Lixian County in Gansu Province in the People’s Republic of China. The author identifies prominent issues that exist in relation to repatriation claims and offers some practical advice on the recovery of Chinese archaeological objects, which may assist the Chinese government in its decision making.

**Keywords:** recovery, Chinese gold foils, France

## **INTRODUCTION**

On 24 February 2005, the Ministry of Culture of the People’s Republic of China (PRC) and China’s State Administration of Cultural Heritage (SACH) jointly launched an intensive investigation into Chinese cultural objects<sup>1</sup> that had been

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<sup>1</sup>Since the terms of “cultural property,” “cultural objects,” “cultural heritage,” “cultural relics,” “return,” “repatriation,” as well as “restitution” have all been used in various legal instruments and literature, these terms are interchangeably used in this article, and their exact meaning depends on the context.

illicitly stolen and taken overseas.<sup>2</sup> At that time, it had been reported that the 32 gold foils had been stolen from the Eastern Zhou tombs in the Dapuzishan mountain region of Lixian County in Gansu Province, PRC, and were now stored in France's Guimet Museum. The 32 stolen gold foils therefore gained widespread attention from both central and local government within China as well as related departments at the time. However, when the evidence was lacking and the leads were lost, the Ministry of Culture of the PRC and the SACH had to give up this special investigation for the 32 stolen gold foils.

After a period of nine years, the Ministry of Culture formally announced a new investigation on the case of the stolen gold foils in an internal meeting. Soon afterward, the SACH officially informed the French government that these 32 Chinese gold foils were potentially stolen from the Eastern Zhou tombs in the Dapuzishan Mountain Region of Lixian County in Gansu Province, PRC. The French government later confirmed that the 32 stolen gold foils had been stored in the Guimet Museum for nearly 21 years.<sup>3</sup>

On 12 October 2014, the SACH called a conference of experts on cultural heritage law and history, archaeology and museology. The aim of this conference was to establish a Joint Franco-Chinese Expert Panel on the recovery of the 32 stolen gold foils. There were only three Chinese experts selected through a rigid evaluation process organized by the SACH at the end of this conference, while the other French experts were appointed by the French government.<sup>4</sup> These Chinese experts were to be in charge of working out a draft memorandum to the Chinese government that would provide a reference for the Chinese government's decision making. The other French experts would also offer additional help in the investigation.<sup>5</sup> Based on the common desires of China and France, the Joint Franco-Chinese Expert Panel was finally set up at the end of this expert conference, which symbolized the official start of the recovery of the 32 stolen gold foils.

The purpose of the following article is twofold. First, it provides an in-depth examination of the case of the stolen gold foils from a perspective of private international law and reveals the serious issues concerning the repatriation of Chinese archaeological objects. Second, it highlights the deficiencies in the Chinese recovery

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<sup>2</sup>See "France Returning 32 Pieces of Cultural Objects to China" ("Pinyin: Zhong Guo Qing Nian Bao"), *China Youth Daily*, 15 July 2015, [http://zqb.cyol.com/html/2015-07/15/nw.D110000zgqnb\\_20150715\\_103.htm](http://zqb.cyol.com/html/2015-07/15/nw.D110000zgqnb_20150715_103.htm) (accessed 2 October 2016).

<sup>3</sup>See "Eternal Regret: Lixian, Dapuzishan Mountain Region," 2015, [http://www.360doc.com/content/12/0703/13/2795085\\_221899352.shtml](http://www.360doc.com/content/12/0703/13/2795085_221899352.shtml) (accessed 2 October 2016) (in Chinese).

<sup>4</sup>The three Chinese experts were Zhao Huacheng, Huo Zhengxin, and Wang Xudong, who came from the College of Archaeology at Peking University, the China University of Political Science and Law, and the Dunhuang Research Academy respectively. Although the author was not a member of the Joint Sino-France Experts Panel (which comprised six people), he was given the opportunity to participate in the meeting of the Joint Sino-France experts in 2015.

<sup>5</sup>The Legal Office memorandum was only to be used for internal administration and was not publicly disclosed.

mechanism on stolen archaeological objects and suggests possible areas of improvement and reform.

### WHERE DID THE 32 ITEMS OF STOLEN GOLD FOILS COME FROM?

At the very beginning, Chinese scientists and archaeologists were not entirely clear about where the 32 stolen gold foils had come from. Therefore, they had been debating the archaeological provenance of the 32 stolen gold foils for more than 10 years.<sup>6</sup> When it comes to archaeological provenance, the Eastern Zhou tombs have to be mentioned. Giving a brief introduction to the Eastern Zhou tombs in the Dapuzishan Mountain Region of Lixian County in Gansu Province is quite necessary, because of their unique cultural significance and archaeological value as well as their relationship with the 32 stolen gold foils.

The Dapuzishan Mountain Region, which is located about 13 kilometers to the east of the seat of Lixian County, Gansu Province, and stands on the north bank of the West Han River, where it joins the Yongping River, a tributary flowing from the north, is a large-scale site of early Qin culture, including city remains and burial sites.<sup>7</sup> On 7 January 2004, the Gansu Provincial Institute of Cultural Relics and Archaeology as well as the School of Archaeology and Museology, together with Peking University, the National Museum of China, Shanxi Provincial Institute of Archaeology and School of Culture and Museology, and Northwest University, organized the joint project team and started the intensive survey, scientific excavation, and research projects on the early Qin culture.<sup>8</sup> Chinese historians and archaeologists have found preliminary evidence of the exact site for the scientific excavation of the Eastern Zhou tombs in the Dapuzishan Mountain Region.

From 1 September to 30 November 2006, the Dapuzishan Mountain Region was excavated as a part of the early Qin culture exploration project.<sup>9</sup> This scientific excavation uncovered nine tombs and one chariot and horse pit; some tombs were quite well preserved, while others had been heavily looted.<sup>10</sup> The historical remains discovered in this excavation included one musical instrument pit and four human victim pits. According to the excavation of the sacrificial site in Dapuzishan Mountain Region, a simple and clear distribution map is shown in Figure 1.

T1 to T4 were four human remains pits, while the remaining one, T5, was a musical instrument pit. T3 was the largest tomb in the Dapuzishan Mountain Region. T5 was located close to T3, which was supposed to be the tomb of the Duke of Qin, and it lies in a similar orientation that tomb as well as to the chariot and the horse pits, which implies that this pit might have been related to the largest human

<sup>6</sup>W. Han 1995, 6.

<sup>7</sup>Collaborative Archaeological Team of the Early Qin Culture 2010a, 46.

<sup>8</sup>Collaborative Archaeological Team of the Early Qin Culture 2010a, 46.

<sup>9</sup>Collaborative Archaeological Team of the Early Qin Culture 2010b, 56.

<sup>10</sup>Jia 2011, 86.

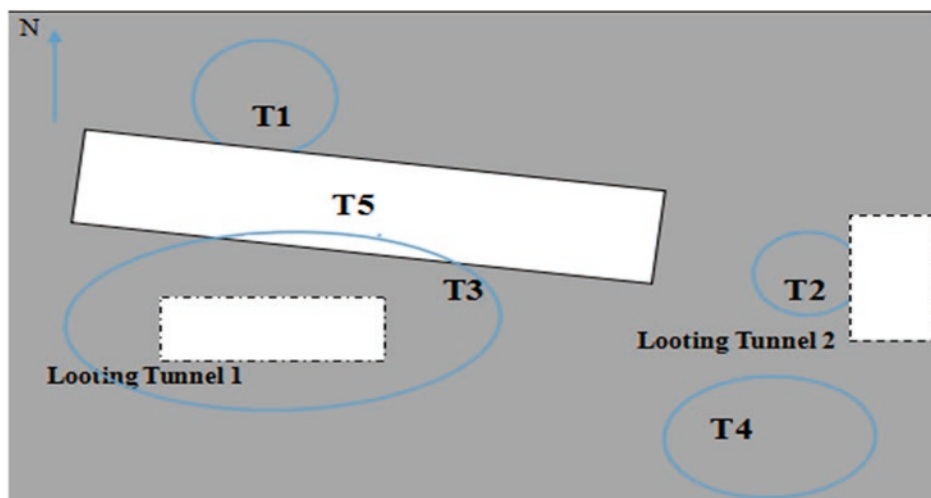


FIGURE 1. The Excavated Tombs in Dapuzishan Site. Reproduced from Collaborative Archaeological Team of the Early Qin Culture 2008.

remains tomb.<sup>11</sup> Preliminary statistics show that there were 154 unearthed burial articles. Namely, in the T1–T5 tombs, researchers found 21 bronzes; eight pieces of pottery; 19 objects made of jade and stone; 107 stone scepters and a small number of gold foils.<sup>12</sup> Several cases of bronzes with the inscription of the title “Qin Zi (Viscount of Qin)” have been found in this region, some of which have been attributed to the largest human tomb in the Dapuzishan Mountain Region.<sup>13</sup> Further research shows that the findings in the four human remains pits and the musical instrument pit reflect the practical details of the various sacrifices and rites in that period. Using comparative analyses, Chinese archaeologists presumed at first that the gold foils (as shown below) were identical to the gold foils that were stored in the Guimet Museum. According to the credible historical records, one of the earliest uses of these gold foils was as a rare decoration for the ancient Chinese nobility and for their horses. They are therefore seen as a sign of the master’s identity and a status symbol in the ancient dynasty (Figure 2).<sup>14</sup>

To further investigate the archaeological provenance of the 32 stolen gold foils and to clarify their relationship to the gold foils unearthed in the Dapuzishan Mountain Region, Chinese archaeologists adopted methods of carbon isotope analysis. The final testing proved that the 32 stolen gold foils came from the Dapuzishan Mountain Region.<sup>15</sup> Specifically, they belonged to a looted Eastern Zhou tomb of coffins in the Dapuzishan Mountain Region. The tomb owners were Zhuang of Qi State (794–31 BC)

<sup>11</sup> Collaborative Archaeological Team of the Early Qin Culture 2010b, 56–57.

<sup>12</sup> Collaborative Archaeological Team of the Early Qin Culture 2008, 35–37.

<sup>13</sup> Collaborative Archaeological Team of the Early Qin Culture 2010a, 55.

<sup>14</sup> Collaborative Archaeological Team of the Early Qin Culture 2008, 38.

<sup>15</sup> W. Han 1995, 9.



FIGURE 2. A small number of gold foils found at the Excavated Tombs in Dapuzishan Site. Reproduced from Han 1995.

and Zhong of Qin State (844–22 BC), respectively.<sup>16</sup> In view of this information, Chinese archaeologists safely concluded that all of the gold foils mentioned above came from the same tomb and were stolen by tomb raiders at the same time.

### ILLCIT EXCAVATION IN CHINA

China is traditionally identified as a major source nation for the illicit traffic in cultural objects.<sup>17</sup> Illicit excavations started on a large and extremely serious scale after the establishment of the “Reform and Opening up” policy in 1978,<sup>18</sup> the time when then Vice Premier Deng Xiaoping started to initiate early dialogues between China and the West.<sup>19</sup> With a flourishing black market in China and overseas, as well as the free movement of goods and persons across the borders in this global village, the fight against the illicit excavation and traffic of Chinese archaeological objects is now more difficult than ever before.<sup>20</sup>

<sup>16</sup>Han 2010, 2513–14; Qian 1993, 67–68.

<sup>17</sup>Merryman 1986, 831–32. “Source” nations are nations where a given cultural object originated, while other nations are considered “market” or “transit” nations. Source nations are often seen as having the right to determine which objects are classified as cultural property and, thus, are subject to export and import restrictions.

<sup>18</sup>Grose 2006, 40–41.

<sup>19</sup>Shirk 1993, 53. The Chinese Economic Reform (“Reform and Opening Up,” 改革开放) refers to the program of economic reforms termed “socialism with Chinese characteristics” in the People’s Republic of China (PRC) that was started in December 1978 by reformists within the Communist Party of China (CPC). The Third Plenary Session of the 11th Central Committee of the CPC, held in late 1978, saw the introduction of Chinese reform and opening-up policies. The new policies ranged from rural reform to urban reform, from reform of economic structure to structures in all aspects, and from internal revitalisation to external opening up. Deng Xiaoping was the major leader and chief architect of Chinese reform and opening-up policies.

<sup>20</sup>He 2001, 19–20.

In practice, art market participants<sup>21</sup> have been keeping the cycle of supply and demand going.<sup>22</sup> Being able to benefit from China's thousand-year history, illicit excavation has now been "industrialized" into a chain of clandestine excavation, smuggling, storage as well as selling. The SACH has estimated that from 1998 to 2013 over 220,000 Chinese tombs have been broken into and looted, with the pieces being illicitly sold throughout the world.<sup>23</sup> Furthermore, it is difficult to estimate the exact number of archaeological objects that have been taken out of China in recent years because the illicit excavation and export of archaeological objects are widespread, and trafficking in cultural objects has spiraled out of control in remote and border areas as well as in poverty-stricken areas. Although China's current legal regime overseeing cultural property<sup>24</sup> has long been combating the illicit excavation and exporting abroad of cultural objects, some Chinese domestic law has been ill-adapted to meet the challenge of such large-scale clandestine excavation and theft of archaeological objects in recent years.<sup>25</sup>

As a result of these experiences, the Chinese government and non-governmental organizations (such as Cultural Heritage Watch and the Association for the Protection of Chinese Art in Europe) have now focused on approaches aimed at recovering these stolen archaeological objects and fighting against the illicit excavation and exporting abroad of Chinese archaeological objects. On 28 October 2002, the SACH first launched the National Special Fund for Collecting Treasured Cultural Relics, which is a project aimed at repatriating treasured cultural objects lost overseas. Although a certain number of stolen cultural objects have been recovered through this national project, these stolen cultural objects have not been publicly disclosed since the majority of the records are still kept confidential. The case of the stolen gold foils stands out as a successful case of repatriation. It is worth mentioning that the Chinese government took the initiative to recover these archaeological objects from a "market" nation (France), which could open the door for more archaeological objects coming back to China in the near future.

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<sup>21</sup>Bowman 2008, 225–26. The art market is primarily centred on the creation and exchange of value through art. In order to have a market, art must have some value, and because this value is assigned rather than intrinsic, there must be some strategy that goes into its creation. Whether this value is a result of aesthetics, artists' reputation, or any other factor, the value of a work must be categorized in some way so that it can be assigned value relative to the rest of the market.

<sup>22</sup>Hutt 2004, 22.

<sup>23</sup>See Hannah Beech, "Spirited Away," *Time Asia*, 13 October 2013, <http://www.time.com/time/asia/covers/501031020/story.html> (accessed 3 October 2016).

<sup>24</sup>The current Chinese legal regime for cultural property is primarily based on two major laws, the Law of the People's Republic of China on the Protection of Cultural Relics, No. 76, 2002 (Law on the Protection of Cultural Relics) and the Criminal Law of the People's Republic of China, 1997 (Criminal Law), which mandate strict regulation of any discovered cultural relics as well as harsh punishments for failures to comply with such regulations.

<sup>25</sup>Huo 2016, 478.

## HOW THE 32 STOLEN GOLD FOILS CAME TO BE IN THE GUIMET MUSEUM

These stolen gold foils have undergone a labyrinthine journey through the murky trails of illicit export and ownership of them has been transferred many times. In order to restore the facts and issues on the case of these stolen gold foils, the author spent one week interviewing the Chinese experts of the Joint Franco-Chinese Expert Panel and visiting the SACH in November 2014, which helped to unlock the secrets of this case.<sup>26</sup> In early 1993, Gansu's Bureau of Cultural Heritage sent an investigative team to the Dapuzishan Mountain Region after learning the news of the tomb's robbery.<sup>27</sup> In June of the same year, the Gansu's provincial government called a specialized conference, which required governments at all levels to strengthen their leadership and make earnest efforts to fulfill their obligation to protect archaeological objects and crack down on smuggling archaeological objects and other related criminal activities.<sup>28</sup> In the meantime, Gansu Provincial Public Security also seized this opportunity to call upon the local Public Security Bureaus to unite in a campaign against criminal acts in the interest of protecting archaeological objects. Soon afterward, Longnan Municipal Public Security Bureau set up a special investigation team on the case of the 32 stolen gold foils and managed to crack the case in several days.<sup>29</sup> The tomb raiders and the local antiquities dealers from Dapuzishan Mountain Region were caught and questioned about the whereabouts of the 32 stolen gold foils.

In the following trials, the tomb raiders confessed their crimes to the police, including the fact that they had sold the gold foils to the antiquities dealers. One of the raiders told the police that they took responsibility for smuggling these stolen gold foils to Hong Kong via a middleman for the illegal trade. The following facts have confirmed that the 32 gold foils were sold as works of art to someone in Hong Kong. As for the tomb raiders and local antiquities dealers, they were punished according to the Criminal Law of the PRC.<sup>30</sup>

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<sup>26</sup>Unfortunately, owing to the former practice of maintaining secrecy, the French experts are reluctant to release more details about amicable negotiation and relevant agreements. However, the Chinese experts revealed some facts and issues on the case of the stolen gold foils. Here I would also like to express my sincere thanks to the Chinese experts and the China's State Administration of Cultural Heritage (SACH) for providing these valuable materials.

<sup>27</sup>See "Eternal Regret."

<sup>28</sup>See "Eternal Regret."

<sup>29</sup>He 2001, 21–22.

<sup>30</sup>According to the Criminal Law, Art. 328, the tomb raiders who excavated and robbed a site of ancient culture or ancient tomb of historical, artistic, or scientific value were sentenced to seven years in prison. As for the local antiquities dealers, who, for the purpose of profit, resold the cultural relics, the sale of which was prohibited by the state, were sentenced to five years in prison, according to the Criminal Law, Art. 326.

France's top private collector and recognized expert in Chinese antiquities is Christian Deydier. He bought 28 of the gold foils from a Taiwanese antiques dealer who lived in Hong Kong in 1993. Han Wei, a famous Chinese archaeologist and the former director of Shanxi's Provincial Institute of Archaeology, travelled to France on business in 1994. When Han visited Paris, he had a private meeting with his old friend Deydier, who showed him the 28 gold foils. Han was astonished at the distinct geometric design of the gold foils, and previous experience had taught him that these gold foils must have definitely originated from China rather than from France. From Han's earlier experience, he estimated that the 28 gold foils belonged to a raided Eastern Zhou tomb in Gansu Province. With the help of Deydier, Han attempted to trace the origins of these gold foils after he returned to China, learning that the 28 gold foils specifically included hawk-shaped gold foils, dagger-shaped gold foils, and mini gold foils, which had never been published. Figures 3, 4, and 5 show these stolen gold foils.

Han concluded his academic findings and published simultaneously in Chinese and French publications several days later.<sup>31</sup> Furthermore, Deydier recalls that he received a telephone call from the wife of a former Taiwanese antiques dealer, who desired to sell him some gold foils resembling those archaeological objects her late husband had previously sold to him, including four hawk-shaped gold foils. After a long deliberation, Deydier promised to buy the rest of these gold foils. In the meantime, France's then President Jacques Chirac's attention had been attracted to the events. He was another admirer of Chinese cultural objects, and when he heard of the existence of the 4 gold foils, he persuaded his billionaire friend Francois Pinault, founder of the French luxury group Kering, who owns luxury brands such as Gucci, to buy the four hawk-shaped gold foils from Deydier for €1 million and

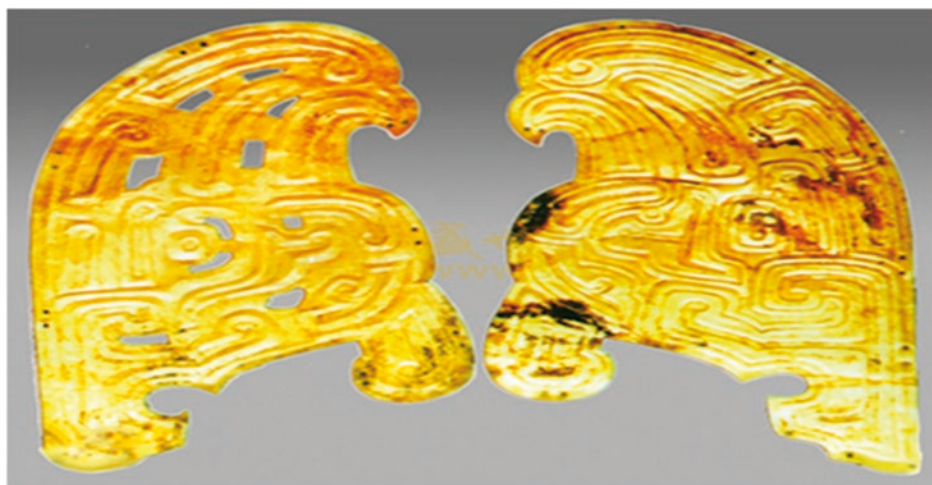


FIGURE 3. Hawk-shaped Gold Foils (4 Items) (H 52 cm x L 28 cm x W 32 cm). Reproduced from Han 1995.

<sup>31</sup>W. Han 1995, 4–5.





FIGURE 4. Mini Gold Foils (26 Items) (H 12.2 cm x L 14 cm x W 8.8 cm) (H 11.3 cm x L 14 cm x W 10.3 cm). Reproduced from Han 1995.

to donate them to the Guimet Museum.<sup>32</sup> After Pinault donated these gold foils to the museum, Deydier followed suit and also donated his remaining 28 gold foils, and this is how the 32 stolen gold foils came to be in the Guimet Museum.<sup>33</sup>

#### RECOVERY THROUGH TRANSNATIONAL LITIGATION

This case has been chosen because of the legal issues that it involves that concern the repatriation of archaeological objects stolen from their former sites of cultural heritage. On the whole, the Chinese government has put forward the proposition of recovering the 32 stolen gold foils from France.<sup>34</sup>

In order to have them returned, the primary issue was to identify the original owner (claimant). In the principle of private law, if the obligee claims for the return of the



FIGURE 5. Dagger-Shaped Gold Foils (2 Items) (H 10.2 cm x L 14 cm x W 9.3 cm). Reproduced from Han 1995.

<sup>32</sup>Lorena Muñoz-Alonso, "France's Restitution of 32 Artifacts to China Draws the Wrath of Antiques Dealer," *Art News*, 2015, <https://news.artnet.com/art-world/france-controversial-restitution-china-319620> (accessed 3 October 2016).

<sup>33</sup>Muñoz-Alonso, "France's Restitution of 32 Artifacts."

<sup>34</sup>It should be pointed out that the case of the 32 stolen gold foils was thrown out of the French Court because of insufficient evidence at that time.

subject matter, he or she has to prove that he or she enjoys the ownership of the object.<sup>35</sup> As a result, there are at least three aspects that should be considered in this case: good faith acquisition, the acquisitive prescription, and the limitation of action. The following sections will analyze the legal possibility of recovering the 32 gold foils from the Guimet Museum through transnational litigation.

### *Jurisdictional Problem*

The jurisdictional problem is the chief problem of transnational litigation. The identification of the appropriate forum to hear disputes on cultural objects is determined by jurisdictional rules and choice between state courts within the national legal sphere. It is universally acknowledged that a lawsuit brought on in relation to a cultural objects dispute shall be under the jurisdiction of the place where the cultural object is situated.<sup>36</sup> The 32 gold foils were now situated in the Guimet Museum. Therefore, the French court had the jurisdiction to preside over this case. If the Chinese government had chosen to file a lawsuit in a Chinese court rather than in a French court, it would have to face the issues of recognition and enforcement of the judgment in this litigation. For reasons of national interest and cultural internationalism, it was possible that the French court would not be willing to recognize and enforce this judgment on the return of the 32 stolen gold foils because the French court would want to avoid setting a precedent for other source nations.<sup>37</sup> In addition, without a Sino-French bilateral agreement on mutual legal assistance in civil matters, the recognition and enforcement of this judgment would also face great challenges.

### *The Issue of Characterization*

Characterization is the second stage in the procedure to resolve a lawsuit involving a foreign law element, and this process is described in English law as classification.<sup>38</sup> Through the analysis of the relevant provisions of the Property Law of the PRC and the Civil Code of France, we can solve the issue of characterization. To be more specific, on the basis of the Property Law, the stolen gold foils can generally be moved; they are not attached to property or land and can be touched and felt.<sup>39</sup> Another side of the coin is that the Civil Code of France stipulates the definitions of movable and immovable property. That is, property is defined as immovable either by its nature or by its destination or by the object to which it applies.<sup>40</sup> Movable property refers to things that can move from one place to another, whether they

<sup>35</sup>Buchman 1985, 21.

<sup>36</sup>Pecoraro 1990, 45.

<sup>37</sup>Merryman 1986, 831–32.

<sup>38</sup>Currie and Juenger 2001, 180.

<sup>39</sup>Property Law of the People's Republic of China, No. 62, 2007, Arts. 23–27.

<sup>40</sup>Civil Code of France, 2008, Art. 518.

move by themselves or whether they can move only as the result of an extraneous power.<sup>41</sup> As previously stipulated, these 32 stolen gold foils would have been classified as movable property by the French court.

### *The Qualification of the Litigation Subjects*

It seems fair and reasonable that the individual claimant (plaintiff) could become a rightful litigation subject and could also file a lawsuit for the recovery of the stolen cultural objects in the court of a foreign nation. If the stolen cultural objects are owned by the state, is it possible that the government was regarded as a rightful litigation subject? In fact, it has been controversial in the legislation and judicial circles whether a government could bring a civil action to the court of another state as a rightful litigation subject.<sup>42</sup> Legally speaking, a rightful litigation subject must meet the following requirements: first, a rightful litigation subject must have the capacity for action in the civil litigation and, second, a rightful litigation subject must have a direct interest relationship with the civil litigation in accordance with the legal provisions.<sup>43</sup>

Back to the case of the stolen gold foils, the rightful litigation subject (plaintiff) should be the Chinese government because the ownership of the 32 stolen gold foils belongs to China, according to the provisions of the Law of the PRC on the Protection of Cultural Relics.<sup>44</sup> However, unsurprisingly, the Chinese authorities refused to bring a lawsuit against the French government on the grounds that the Chinese government was reluctant to be regarded as a plaintiff or defendant in any foreign-related civil cases. From the Chinese authorities' point of view, all states and governments are reluctant to answer charges in the courts of other states. It is generally supposed that the Chinese government "feared a loss of face" and simply preferred to authorize Bernard Gomez as the representative of the Chinese government.<sup>45</sup> However, the truth of the matter was quite different. The majority of states hold that a state enjoys the right of state immunity if it is being sued in the court of another state.<sup>46</sup> China is no exception.

In view of these facts, the Chinese government decided in 2006 to authorize Gomez to take action on behalf of the Chinese government to recover the 32 stolen gold foils by means of litigation. Therefore, Gomez and Deydier (and the Guimet Museum and the French Ministry of Culture) served as the litigants instead of the Chinese and French governments, which would greatly increase the probability

<sup>41</sup>Civil Code of France, Art. 528.

<sup>42</sup>Luo 2009, 19–20.

<sup>43</sup>Huo 2011, 92–117.

<sup>44</sup>Law on the Protection of Cultural Relics, Art. 5.

<sup>45</sup>Bernard Gomez had devoted himself to helping the Chinese government and the Chinese people to recover lost cultural objects for many years and had created a non-governmental organization, the Association for the Protection of Chinese Art in Europe, in Paris.

<sup>46</sup>Fox 2008, 10.

that the Chinese government would win this lawsuit. The Chinese government's decision carries a foreshadowing of what was to follow later on in the story. On 2 October 2006, Gomez helped the Chinese government to bring a criminal indictment against Deydier, the Guimet Museum, and the French Ministry of Culture simultaneously in a French court,<sup>47</sup> accusing them of "concealment and laundering of artwork from international trafficking of goods and cultural objects" (*Recel et blanchiment d'œuvres d'art issues du trafic international de biens et d'objets culturels*).<sup>48</sup> However, the presiding Judge Philippe Courroye dismissed this lawsuit as there was not enough evidence to support the claim that the 32 gold foils had been stolen from China.<sup>49</sup>

### *Choice of Law*

The relevant rules of French conflict of laws should be considered. France, like other European countries, has implemented the European private international law regulations, such as the Rome I and Rome II Regulations.<sup>50</sup> These two regulations have universal application and include member states and non-member states. However, the case of the 32 gold foils falls outside the scope of the Rome Regulations due to the retroactive effect issue. Under the relevant provisions of France's private international law, a lawsuit brought on in relation to a cultural objects dispute shall be under the jurisdiction of the place where the cultural object is situated.<sup>51</sup> Therefore, the case of the stolen Chinese gold foils should be governed by, and construed in accordance with, French law.

### *Good Faith Acquisition*

Good faith acquisition is a problem addressed in this case. Good faith purchasers are those "who conduct reasonable due diligence but have no reason to believe that

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<sup>47</sup>The Chinese experts of the Joint Franco-Chinese Expert Panel and the author have no idea why the plaintiff Gomez started criminal proceedings against Christian Deydier, the Guimet Museum, and the French Ministry of Culture simultaneously in a French court. The author presumes that Gomez brought formal criminal charges aimed at reducing the risk of losing this lawsuit. However, it should be pointed out that Gomez was not the rightful litigation subject in this case.

<sup>48</sup>See "Mr. Bernard Gomez, a Famous French Expert on Chinese Cultural Objects Was Helping the Chinese Government and the Chinese People to Recover Lost Cultural Objects," 2016, <http://cul.sohu.com/20090302/n262547918.shtml> (accessed 19 September 2017) (in Chinese).

<sup>49</sup>See "Mr. Bernard Gomez."

<sup>50</sup>Council Regulation 593/2008 on the Law Applicable to Contractual Obligations [2008] OJ L177 (Rome I Regulation). Council Regulation 864/2007 on the Law Applicable to Non-Contractual Obligations [2007] OJ L199 (Rome II Regulation). The Rome I Regulation governs the law applicable to contractual obligations, while the Rome II Regulation defines the conflict-of-law rules applicable to non-contractual obligations in civil and commercial matters. The Rome I Regulation was implemented in France with effect from 17 June 2008, and Rome II has been applicable in France since 11 January 2009.

<sup>51</sup>Civil Code of France, Art. 2303.

objects purchased or obtained gratuitously are protected as cultural property.” Protection needs to be afforded to good faith purchasers; otherwise the legitimate international trade in art could be adversely affected.<sup>52</sup> Had the present possessor (the Guimet Museum) acquired the title of the 32 gold foils in good faith? The answer was no. In fact, two possibilities existed explaining how the present possessor could have acquired a valid title to the gold foils: by transfer or by lapse of time. In this case, there was the relationship between the Guimet Museum and the private collectors in the acquisition by transfer. The 32 gold foils were stolen from the Eastern Zhou tombs in the Dapuzishan Mountain Region of Lixian County, Gansu Province. The Taiwanese antiquities dealer (the unauthorized possessor) purchased the 32 gold foils from antiquities dealers and sold them to Deydier and Pinault. Finally, these two private collectors donated the 32 stolen gold foils to the Guimet Museum. These stolen gold foils had obviously passed through several hands before reaching Deydier and the Guimet Museum, but the Guimet Museum still did not know how the late Taiwanese dealer obtained these gold foils. What is more, Deydier paid a far lower price for these gold foils compared to their true worth.<sup>53</sup> Therefore, the claimant (the Chinese government) successfully argued that the private collectors did not purchase the gold foils in good faith, as a consequence of which the latter was not allowed to invoke Article 2280 of the French Civil Code at all.<sup>54</sup>

### *The Principle of Due Diligence*

The Taiwanese antiques dealer (the previous “owner”) and Deydier had an obligation to verify the provenance of the 32 gold foils in the first place. To be more specific, they should have ascertained the veracity and accuracy of all of the information supplied to them to explain the ownership history of the 32 stolen gold foils and uncovered additional information about their history. Although the Taiwanese antiques dealer had not offered a full set of documents that revealed the objects’ entire history, Deydier still bought them from him at the lower price.<sup>55</sup> Therefore, Deydier cannot be treated as a good faith purchaser in this case.<sup>56</sup>

Second, the Guimet Museum should also have exercised the principle of due diligence, according to the International Council of Museums’ Code of Ethics for Museums. However, the Guimet Museum had not ascertained whether or not the former possessors (Deydier and Pinault) had the proper title to the gold foils and

<sup>52</sup>Cottrell 2009, 636.

<sup>53</sup>W. Han 1995, 11.

<sup>54</sup>Civil Code of France, Art. 2280: “Where the present possessor of a thing lost or stolen has bought it at a fair or market, or at a public sale, or from a merchant selling similar things, the original owner may have it returned to him only by reimbursing the possessor for the price which he has paid for them.”

<sup>55</sup>See “The Return of Gold Foils,” 2016, [http://www.dooland.com/magazine/article\\_730949.html](http://www.dooland.com/magazine/article_730949.html) (in Chinese).

<sup>56</sup>See “The Return of Gold Foils.”

still accepted their donation.<sup>57</sup> Furthermore, the 32 gold foils were stolen from the Eastern Zhou tombs in the Dapuzishan Mountain Region of Lixian County, Gansu Province, and were Chinese cultural objects. According to the provisions of the Law on the Protection of Cultural Relics, if they are state-owned cultural objects, no individual can ever have a valid title to the state-owned cultural objects.<sup>58</sup> That is to say, the Chinese government had the right make a claim for the recovery of the 32 gold foils from the present possessor, even if the present possessor was in good faith.

### *Statutes of Limitations*

Statutes of limitations are an indispensable part of cultural property disputes.<sup>59</sup> Legally speaking, statutes of limitations can be divided into acquisitive prescription and extinctive prescription.<sup>60</sup> In France, statutes of limitations are considered to be a matter of substantive law because they limit the exercise of a substantive right rather than a legal remedy.<sup>61</sup> Therefore, the determination of the applicable statutes of limitations will not depend on the law of the forum. Rather, the law applicable to the underlying substantive claims, which is determined primarily by a valid choice-of-law clause or, secondarily, by French conflict-of-law rules, will also govern the statute of limitations for those claims.

Article 2279 of the Civil Code of France stipulates the limitation period as follows: “The person or body who has lost an object or from whom it has been stolen may claim it during three years from the day of the loss or of the theft, from the one in whose hands he finds it, subject to the remedy of the latter against the one from whom he holds has purchased it.”<sup>62</sup> In other words, the Chinese government should bring a lawsuit against the Guimet Museum within three years. Once the limitation period has run out, the Chinese government is without legal redress. However, if the Civil Code of France has other provisions concerning statutes of limitation, these provisions shall apply. The Chinese government neglected the possibility that they could raise a plea against temporary exception. Where the present possessor of a cultural object has lost or stolen it or has bought it at a fair or market, a public sale, or from a merchant selling similar objects, the original owner may have it returned to him only by reimbursing the possessor for the price that he paid. A lessor who claims, under Article 2102 of the Civil Code of France, that the movables were displaced without his consent and that they have been bought in the same condition, must likewise reimburse the buyer for the price that he has

<sup>57</sup>See “The Return of Gold Foils.”

<sup>58</sup>Law on the Protection of Cultural Relics, Art. 5.

<sup>59</sup>Cottrell 2009, 638.

<sup>60</sup>Redmond-Cooper 1998, 148.

<sup>61</sup>Redmond-Cooper 2009, 318.

<sup>62</sup>Civil Code of France, Art. 2279.

paid for them. All claims, *in rem* as well as *in personam*, are prescribed for 30 years, without the person who alleges that prescription being obliged to adduce a title or a plea resulting from bad faith being allowed to be set up against him.<sup>63</sup>

In this case, the 32 stolen gold foils were obviously not bought at a fair or market or at a public sale. They were illicitly trafficked to France in 1993, and, thus, 22 years had passed by the end of October 2015. Therefore, it is reasonable to assume that the Chinese government still has the right to bring a lawsuit against the Guimet Museum. That is the reason why the French court accepted to hear the case in 2006.<sup>64</sup>

### *The Burden of Proof*

From the perspective of the French Civil Code, good faith is always presumed, and it is based on the person who alleges bad faith to prove it.<sup>65</sup> The Chinese government should have lodged a claim that the onus was on the Guimet Museum to prove whether it held these gold foils unlawfully or dishonestly. Gomez (the plaintiff) claimed that the 32 stolen gold foils had been illicitly removed from China in 2006.<sup>66</sup> Chinese scholars and archaeologists also further confirmed that the 32 gold foils were stolen from the Eastern Zhou tombs in the Dapuzishan Mountain Region. Therefore, the Guimet Museum should not have accepted this donation.<sup>67</sup> However, in order to enrich their collections, the Guimet Museum did not exercise due diligence and received the gold foils from private collectors directly.<sup>68</sup> Since transactions of state-owned cultural objects can never be legal, no good faith purchaser could have a valid title to these state-owned gold foils.<sup>69</sup> The French government and the Guimet Museum had no valid argument against this point according to the Law on the Protection of Cultural Relics, when they negotiated with the Chinese government.

## RECOVERY THROUGH NEGOTIATION

The Chinese government, the SACH, and Gomez resumed their efforts to recover the 32 stolen gold foils after the French Court dismissed the lawsuit that there was not enough evidence to support the claim that the gold foils had been stolen from China.<sup>70</sup> The Chinese government had to resort to political pressure based upon museum ethics. First, the Chinese government selected a representative once again (Duan Yong, the current director of the Palace Museum) and wrote a private letter

<sup>63</sup>Civil Code of France, Arts. 2262, 2280.

<sup>64</sup>See "Mr. Bernard Gomez."

<sup>65</sup>Civil Code of France, Art. 2268.

<sup>66</sup>See "Mr. Bernard Gomez."

<sup>67</sup>See "Mr. Bernard Gomez."

<sup>68</sup>See "The Return of Gold Foils."

<sup>69</sup>Law on the Protection of Cultural Relics, Art. 4.

<sup>70</sup>See "Mr. Bernard Gomez."

to the Guimet Museum in 2010, asking it to return the 32 gold foils. The Chinese government also decided to cease cultural cooperation with the French museum and discussed the matter with foreign representatives on multiple occasions. Second, the Chinese government began gathering evidence to prove that the 32 gold foils were stolen from a looted Eastern Zhou tomb in the Dapuzishan Mountain Region of Lixian County in Gansu Province, PRC.

Taking into account the political and economic implications with France, the Chinese government was trying to avoid any conflict rather than taking an adamant standpoint against the French government. At the very beginning of negotiations between China and France, the reasons for the French government's reluctance to return the 32 gold foils can be summarized in the following points.

- Since the stolen gold foils have been in France and stored in the Guimet Museum for nearly 22 years, they have already become a part of its public and national property.
- The 32 gold foils should be preserved in France, which has the ability to preserve them in an appropriate condition.
- France does not want to return the gold foils to China without any conditions since it could result in more disputes with other countries and even empty its museums, which are filled with looted or stolen cultural objects from other source countries.

The Chinese government took a contrary view and explained their arguments in the following points.

- The 32 gold foils were unearthed and stolen from the Eastern Zhou tombs in the Dapuzishan Mountain Region, and local tomb raiders sold these gold foils to antiquities dealers in 1993.
- Although there are no retroactive legal conventions reaching back to that time, this issue can be discussed with the recent international tendency and agreements that acknowledge the obligation to return these stolen gold foils to China.
- The ownership of these gold foils belongs to China, not to an individual or groups or even museums, it is impossible to substitute ownership to anywhere else in any circumstances. If the 32 gold foils are state-owned cultural objects, no individual or body can ever have a valid title to them; therefore, the Chinese government can argue that the Guimet Museum had not acquired ownership of these gold foils according to the PRC's Property Law.<sup>71</sup> Instead, the Chinese government is the rightful owner of these gold foils based on the Law on the Protection of Cultural Relics.<sup>72</sup>

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<sup>71</sup>Property Law, Arts. 23–27.

<sup>72</sup>Law on the Protection of Cultural Relics, Art. 5.



- Judging from the abundant evidence presented, Chinese archaeologists could safely conclude that the 32 gold foils were stolen by local tomb raiders in 1993.

In this way, both sides maintained their own stances and entered into endless arguments.

### *The Initial Proposal: Permanent Lien*

On 25 March 2014, the fiftieth anniversary of the establishment of diplomatic relations between China and France, Chinese President Xi Jinping formally visited France to convey the Chinese people's memories of the friendship between the two countries and the wish to strengthen the overall strategic partnership between the two countries. The French government also took this opportunity to strengthen diplomatic relations with China and agreed to return the 32 gold foils to China. There followed a series of requests and attempts at friendly negotiation between China and France.

The French government first proposed an unpaid and indefinite permanent lien on the 32 stolen gold foils to China at the end of 2014. Given that China and France belong to civil law systems, a "permanent lien" therefore can be explained as a "possessory lien." The definition of a "lien" is that "the creditor has a right to remain in possession of the property under the lien until the debtor has satisfied his or her debt."<sup>73</sup> However, China and France would not be creating a creditor–debtor relationship in this case; there would not be a mortgaged relationship or a guarantee relationship. Therefore, the Chinese government did not accept the proposal of a so-called "permanent lien" on the 32 stolen gold foils, with the ownership of the items being shared between China and France. The Chinese government proposed that China should enjoy the ownership of the 32 gold foils outright. It was pity that both sides failed to agree on the initial proposal and made their own arguments. However, a compromise was emerging.

### *Repatriation of the 32 Gold Foils: Does It Violate the French Museum Law?*

One question yet remaining was how to break through the barriers of French domestic law. According to the provision for the collections of museums, each public museum should give a numbered identification card to each cultural object.<sup>74</sup> The 32 gold foils had already become part of the national patrimony.

<sup>73</sup>Garner 2016, 832.

<sup>74</sup>Museum Law of France, 2002, Art. L451-4.

On 4 January 2002, the French Parliament promulgated and brought into effect the French Museum Law, which stipulates that all museums and institutions in France are barred from deaccessioning any objects since all such objects form part of the national patrimony or public property.<sup>75</sup> In other words, any public or national museum has no right to give away any part of its collections to any other foreign nations. Therefore, how could the French government violate its domestic law in returning the 32 gold foils to China in order to strengthen its relationship with that country?

The following successful cases show it is possible. On 6 March 2002, legislation in France directed the release of the remains of Saartjie Baartman from the Museum of National History and their return to South Africa.<sup>76</sup> The enactment was a rare example of a cross-border return mandated by a national statute.<sup>77</sup> As of the date that Act came into force, the surviving remains of the person known as Saartjie Baartman ceased to form part of the public collections of the Museum of National History.<sup>78</sup> On 4 May 2010, the French Parliament decided to repatriate 16 tattooed and mummified Maori heads to New Zealand, confirming that France can take moral responsibility for other countries' human rights and pay respect to the wishes of indigenous communities.<sup>79</sup> The success of these two cases provided inspiration for the resolution of the case of the 32 gold foils. However, the French Parliament did not enact and pass a similar national statute to facilitate their repatriation. Considering its own interests, the French government had to look for a compromise so that both sides could "save face."

The Guimet Museum accepted the donation from Deydier and Pinault respectively. However, under the provision of the French Museum Law, this donation cannot be cancelled and neither can the national patrimony be transferred to a private person or to other foreign countries.<sup>80</sup> However, the Ministry of Culture of the PRC and the Guimet Museum put forward an alternative way to solve this difficult problem. They began by negotiating with Deydier and Pinault. At the same time, the French government requested that the Guimet Museum reverse these two donations and so the gold foils were returned to these two private cultural collectors. Following this, the two collectors also agreed to cancel their donations and decided to sign a confidential contract with the Guimet Museum.

<sup>75</sup>Frug 1984, 1065. Minow and Spelman 1992, 1281–83.

<sup>76</sup>Crais and Scully 2009, 184. Saartjie "Sarah" Baartman (born 1790 – 29 December 1815) (also spelled Bartman, Bartmann, Baartmen) was the most famous of at least two Khoikhoi women who, due to their large buttocks (steatopygia), were exhibited as freak show attractions in nineteenth-century Europe under the name the Hottentot Venus. "Hottentot" was the then current name for the Khoi people and is now considered an offensive term.

<sup>77</sup>Prot 2009, 289.

<sup>78</sup>Legislation translated from the French by the UK Department of Culture Media and Sport.

<sup>79</sup>See Christina Okello, "French Parliament Approves Return of Sixteen Maori Heads," *Art Daily*, 2015, [http://www.artdaily.com/index.asp?int\\_sec=11&int\\_new=37850&int\\_mod=1](http://www.artdaily.com/index.asp?int_sec=11&int_new=37850&int_mod=1) (accessed 4 October 2016).

<sup>80</sup>Museum Law of France, Art. L451-4.

Deydier and Pinault promised that the 32 gold foils would be delivered to the PRC within 30 days. On 13 April 2015, Pinault returned four hawk-shaped gold foils to the embassy of the PRC in the French Republic. Deydier returned 28 gold foils to the SACH on 13 May 2015. After one month of extensive preparatory work in classification, collation, and arrangement, the SACH eventually handed over the 32 gold foils to their place of origin (the Gansu Provincial Museum) on 20 July 2015 (Figure 6).<sup>81</sup>

To sum up, it was the first time that French domestic law had authorized the return of an entire category of museum objects rather than a specific object, and it marked a success for the Chinese campaign to have the lost cultural objects returned.

### PRACTICAL ADVICE FOR THE RECOVERY OF CHINESE ARCHAEOLOGICAL OBJECTS

Chinese archaeological objects are essential to the knowledge of the history of Chinese ancient civilizations. The illicit excavation of archaeological objects is one of the most difficult cultural object-related crimes to combat, and its damage goes far beyond the theft of important archaeological objects. How we seek to recover Chinese archaeological objects has become an urgent problem.



FIGURE 6. 32 Stolen Gold Foils (photo courtesy of the SACH and the Gansu Provincial Museum).

<sup>81</sup>This news has come from the China's SACH. Many thanks to the China's SACH and the Gansu Provincial Museum for their kind assistance in providing this photo for my research.

### *What Can the Chinese Government Do?*

The Chinese government and relevant functional departments should make further efforts to recover stolen archaeological objects. In this light, the Chinese government and the SACH should establish a systematic and comprehensive strategy for recovering archaeological objects. This strategy should have the following characteristics: objectivity and precision, comprehensiveness, and foresightedness. The target and direction of recovery must aim at understanding the current situation and all of the facts as well as the relevant national laws, analyze the pros and cons of the current models of repatriation, and improve the negotiation techniques.

I suggest, first, that, as far as Chinese legislation and judicial practice on archaeological objects are concerned, the Chinese government should fully realize the importance and necessity of improving and strengthening Chinese domestic legislation. Chinese legislative authorities have enacted and revised the Law on the Protection of Cultural Relics in a timely manner, so that it is adapted to new circumstances and new situations. However, they still need to extend the economic and criminal penalties to effectively fight against illegally excavating or robbing ancient cultural sites or ancient tombs. At the same time, it is necessary to establish a possible appraisal as well as a reward mechanism and demarcate and coordinate the duties of law enforcement departments at different levels regarding Chinese archaeological objects.

Second, although the current international instruments and relevant national laws are unable to provide a solid legal basis for the repatriation of illicitly exported and looted archaeological objects in the event of armed conflict, the Chinese government, on the one hand, should pay more heed to the adoption of certain customary and international ethical principles concerning the return of archaeological objects. On the other hand, China should take active steps to promote intergovernmental cooperation, build a multi-level intergovernmental macro policy exchange and communication mechanism, expand shared interests, enhance mutual cultural trust, and reach a new consensus on cooperation with other market countries on the return of archaeological objects, under the guidelines and the basic principles of China's foreign policies. The repatriation of archaeological objects should be treated as an important part of China's diplomatic strategy, and an end should be put to the passive state of recovering Chinese archaeological objects. From a long-term perspective, the majority of market nations will have to face this issue and hold friendly talks with the Chinese government, under pressure from public opinion and ethical principles in the international community. In regard to the repatriation of Chinese archaeological objects, China will profit greatly from negotiations through diplomatic channels.

Third, as one of the main functional departments in China, the SACH, together with the Ministry of Culture, should conduct a wide-reaching investigation into, and research on, all stolen archaeological objects in order to track down all information about auction houses and any archaeological objects that have been illegally traded.

Fourth, China should construct diversified mechanisms for recovering archaeological objects, according to the realistic conditions. At the same time, China and other market nations should be encouraged to join bilateral agreements or memoranda of understanding on the protection of cultural property from theft, illegal excavation, and illicit traffic.<sup>82</sup> In addition, law enforcement authorities in China and in other market nations should take all necessary measures to prevent the export of archaeological objects derived from illicit excavations and be encouraged to prohibit the entrance into their territory of archaeological objects that are not accompanied by an export certificate or the authorization issued by the competent authority of the original nation.

Fifth, the Chinese government should learn from the successful experiences of foreign countries in order to reinforce and perfect the protection of Chinese archaeological objects. As mentioned above, foreign national museums have already set a good example for China. State-owned museums, libraries, and other state-owned institutions for the collection of cultural objects should also allocate identification cards for each cultural object. The SACH should also establish and use databases and other mechanisms that have been established to share information internationally about stolen cultural objects – in particular, the Interpol's Stolen Works of Art Database.

Sixth, in terms of recovering Chinese archaeological objects, it involves not only the relationship between different countries but also Chinese national feelings. Non-governmental groups and civil sources have played an important role in recovering archaeological objects from the market countries. It is vital that the Chinese government establish an effective interaction with non-governmental groups. The Chinese government and non-governmental groups also should form a forceful coalition to recover stolen archaeological objects.

Finally, intellectual resources are the most precious resources of China. The Chinese government often does not see the importance of, or are not good at summing up the experience of, recovering lost cultural objects from other market countries. Therefore, the crucial thing is to review what has been done and to promptly correct every false step. The SACH should organize academic researchers and scholars to compile a compendium of official documents and cases on the return of cultural objects (mainly focusing on the United Kingdom, the United States, and European Union countries). In fact, the theory of international cultural heritage law is based on practice and, in turn, serves practice. Chinese academics, especially those in the field of international law, should give greater attention to researching the repatriation of archaeological objects and other market nations' domestic laws (civil law, museum law, and cultural property law), which will provide powerful support for the Chinese government's policymaking.

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<sup>82</sup>According to the statistical data from the China's SACH, by the end of August 2017, China had already signed bilateral agreements on the protection of cultural property from theft, illegal excavation, and illicit traffic with 20 countries. Many thanks to Ye Zhu, division director of the International Organizations of the China's SACH for her assistance in providing the statistical data for this research.

### *What Can the International Community Do?*

Although the Chinese government has made efforts to prevent the illicit traffic of cultural property and recovered stolen archaeological objects for the past three decades, there is still quite a long way to go. In order to conform to international rules as soon as possible, the Chinese government has always taken an active part in the formulation of international institutions and has signed certain international conventions to restrict the illegal flow of cultural property as well as to fight against the crime of theft or illegally excavating and stealing archaeological objects, which protects Chinese national interests and strengthens the process of international relations.

I suggest, first, that current international conventions are, needless to say, instrumental in enhancing the protection of source nations' cultural heritage.<sup>83</sup> If other countries (particularly market nations) have not already become members of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, they should be encouraged to join these international conventions.<sup>84</sup> It is crucial that the majority of market nations be encouraged to ratify the 1995 UNIDROIT Convention.

Second, source nations and market nations are encouraged to join bilateral agreements or memoranda of understanding on the protection of cultural property from theft, illegal excavation, and illicit traffic under the restriction of current international conventions.<sup>85</sup> For example, following a request by the Chinese authorities under the 1970 UNESCO Convention, China and the United States entered into a bilateral agreement on 13 January 2009, imposing import restrictions on certain archaeological material from China under Article IV. The agreement shall remain in force for a period of five years, which can be extended. On 17 January 2014, these two governments agreed that the agreement shall be extended for an additional five years (as of 17 January 2014, the US Department of State was listed on its website). The significance of this agreement cannot be overstated insofar as the United States is believed to be the destination of approximately half of all Chinese cultural objects sold worldwide.

Third, market nations could take the necessary measures to avoid acquiring archaeological objects suspected of having originated from clandestine excavations or of coming unlawfully from official excavations.

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<sup>83</sup>As far as China is concerned, it has ratified four multilateral conventions with regard to cultural property protection, which includes the Convention Concerning the Protection of the World Cultural and Natural Heritage, 23 November 1972, 1037 UNTS 151; the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231 (UNESCO Convention); the Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457 (UNIDROIT Convention); and the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 UNTS 240, plus its First Protocol.

<sup>84</sup>UNESCO Convention; UNIDROIT Convention.

<sup>85</sup>Gruber 2013, 341–63.

Last but not least, considering the retroactive effect of current international conventions, market nations are encouraged to legislate to allow claims to cultural property that would ordinarily be outside the limitation period prescribed by their domestic laws.

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