

A PROTRACTED WAR: THE FIGHT AGAINST ILLICIT TRAFFIC OF CULTURAL PROPERTY IN CHINA

Zhengxin HUO*

I. INTRODUCTION

As Chinese culture is one of humanity's oldest continuous civilizations,¹ China, naturally, becomes a major "source" country in terms of cultural property. Indeed, Professor Merryman notes that "China, with its many centuries of high civilization and its vast area and large population, may be the richest source of cultural property of all".² The tremendous amount, and the enormous variety, of antiquities are the priceless treasures of the Chinese people and, part of the roots of this ancient nation.

Unfortunately, since the mid 19th century, innumerable antiquities have been flowing beyond the border illicitly by looting, smuggling, and other illegal means. According to the statistics, the following periods have witnessed tidal waves of illegal removal of antiquities from China: (1) from the 1850s to the turn of the 20th century; (2) from the 1920s to 1949; (3) from the 1980s to the present.³

* Zhengxin HUO is an Associate Professor of Law, of School of International Law, at China University of Political Science and Law (CUPL); Observer of the 1970 UNESCO Convention, Researcher at Collaborative Innovation Center of Global Governance and International Rule of Law at CUPL. Particular thanks are due to Ms. Ye ZHU, Division Director of the International Organizations of the State Administration of Cultural Heritage (SACH) for her assistance in providing the materials for this paper. The author is solely responsible for the opinions, errors, and mistakes contained in the paper. The paper is supported by the Program for New Century Excellent Talents in University sponsored by the Ministry of the PRC. The author may be contacted at huozhengxin@hotmail.com.

¹ See Toynbee, Arnold J., *A Study of History*, Vol. 1, 1946, pp. 38-40; Ralph, Philip Lee, et al., *World Civilizations, Their History and Their Culture*, Vol. 1, 1991, p. 131.

² Merryman, John Hery, *Foreward to J. David Murphy, Plunder and Preservation: Cultural Property Law and Practice in the People's Republic of China*, 1995, at xiii.

³ Pan, Chengliang, "Zhongguo Wenwu Liushi Jingli de Langchao (The Waves of Illicit Export of Chinese Antiquities)", 5 *Kexue Zhiyou (Friend of Science)*, 2009, p. 51.

The wave of illicit exportation of antiquities in the first period was basically caused by the looting and pillage during the Second Opium War (1856-1860)⁴ and the occupation of Beijing by the Eight Nation Alliance in 1900.⁵ The trigger for the second wave was the Japanese invasion followed by the Chinese Civil War. Though China enacted its first modern cultural heritage law in 1930 in response to the removal of cultural property from China,⁶ the efforts to prevent illegal exportation of Chinese antiquities were almost in vain out of the constant armed conflicts. During this period, the Japanese troops ravaged and looted countless historic relics in China in a systematic manner and took a large number of antiquities to Japan by force which was a catastrophe to the Chinese cultural property.⁷ Moreover, the lack of a strong and efficient central government in China rendered the legal control over illicit traffic in cultural property fruitless, the crimes against cultural property, such as illegal excavation, smuggling, grave-robbing and theft, were extremely rampant across the country during that period, which, inevitably, led to the consequence that illicit traffic in cultural property got out of control.

Since the establishment of the People's Republic of China ("PRC") in 1949, China has entered a long period of peace; therefore, large-scaled looting of cultural property has hitherto never occurred. What's more, in order to thwart illicit exportation of cultural property, the new regime is-

⁴ The Second Opium War, or the Anglo-French expedition to China, was a war pitting the British Empire and the Second French Empire against the Qing Dynasty of China, lasting from 1856 to 1860. When the English and French troops occupied Beijing, they looted and burned the Summer Palace to ruins. The Summer Palace was the Imperial Gardens of the Qing Dynasty which was known for its extensive collection of garden and building architectures and other works of art (a popular name in China was the "Garden of Gardens"). The act of looting and burning the Palace was widely perceived as barbaric and criminal in both China, as well as in some other corners of the world. In his "*Expédition de Chine*", Victor Hugo described the looting as, "Two robbers breaking into a museum, devastating, looting and burning, leaving laughing hand-in-hand with their bags full of treasures; one of the robbers is called France and the other Britain" In his letter, Hugo hoped that one day France would feel guilty and return what it had plundered from China. Victor, Hugo, *The Sack of the Summer Palace*, *UNESCO Courier*, November, 1985.

⁵ The Eight-Nation Alliance was an alliance of Austria-Hungary, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States whose military forces intervened in China during the Boxer Uprising and relieve the siege of the diplomatic legations in Beijing (Peking). The members of the Alliance then occupied Beijing and looted and pillaged the capital.

⁶ Entitled "Law on the Preservation of Ancient Objects", the law forbade the exports of cultural objects, their sale to foreign nationals, or excavations by foreign archaeologists in China. See Greenfield, Jeanette, *The Return of Cultural Treasures*, 3rd ed., 2007, p. 274.

⁷ Xiangguo, Meng, *Dajienan: Riben Qinhua Dui Zhongguo Wenhua de Pohuai (A Catastrophe: The Loss of Chinese Cultural Heritage by the Japanese Invasion)*, 2005, p. 113.

sued various administrative regulations concerning the protection of cultural objects and the prohibition of the exportation of precious antiquities in the 1950s and the 1960s.⁸ Because of the strict implementation of the administrative regulations as well as the isolation of Country from the outside world during the first three decades after the founding of the PRC, illicit traffic of cultural property had been efficiently deterred from the 1950s to the 1970s. As recently as 1983, Professor Bator observed that there was little or no cultural property leaving China, even illegally.⁹

In the late 1970s, China adopted a new policy of reform and opening up to the world, since then, it has been the world's fastest-growing major economy over the past 30 years. By the year of 2011, it has become the world's second largest economy, the largest exporter and second largest importer of goods in the world.¹⁰ Under such a historic background, transnational illicit traffic of cultural property resumes. Moreover, with the flourishing of art market both at home and abroad, as well as the free movement of goods and persons across the borders in a globalized world, the fight against illicit traffic of cultural property has been unprecedentedly difficult. Notwithstanding the unremitting efforts made by the Chinese government, the crimes against cultural property, tomb robbing, theft, and smuggling in particular, have become widespread. In fact, antiquities are thought to be the most valuable single class of items smuggled out of China during this period.¹¹ Many observers even believe that the illegal flow of cultural property out of China has reached culmination over the past three decades.¹² In this light, a thorough introduction and systematic review of the measures taken by the Chinese government to fight against illicit traffic in cultural property since the 1980s is both beneficial and necessary.

⁸ See e.g., Zhengui, Jinzhi, *Wenwu Tushuzhanxin Banfa (Provisional Measures Prohibiting the Exportation of Precious and Valuable Art Objects, Pictures, and Books)*, dated May 24, 1950. Guwenhua Yizhi Ji Gumuzang Zhi Diaocha Fajue Zhanxin Banfa (Provisional Measures Governing the Investigation and Excavation of the Sites of Ancient Cultural Ruins and Ancient Graves and Burial Grounds) dated May 24, 1950; Wenwu Baohu Guanli Zhanxin Banfa (Provisional Regulations on the Protection and Administration of Cultural Objects), dated March 4, 1961.

⁹ Paul Bator, *An Essay on the International Trade in Art*, 34 *Stan.L.Rev.*, 1982, 275, 285.

¹⁰ <http://www.imf.org/external/pubs/ft/weo/2011/02/weodata>, last visited on December 10, 2012.

¹¹ Murphy, J. David, *Plunder and Preservation: Cultural Property Law and Practice in the People's Republic of China*, 1995, 242.

¹² Dutra, Michael L., Sir, "How Much is That Ming Vase in the Window?: Protecting Cultural Relics in the People's Republic of China", 5 *Asian-Pacific Law & Policy Journal*, 2004, 62, 73.

The purpose of this article is two-fold. First, it provides a systematic introduction to the Chinese legal regime concerning the protection of cultural property and the prevention of its illicit traffic, from three perspectives, *i.e.*, from that of legislation, law enforcement and international cooperation. Second, it puts forward suggestions to improving the existing legal regime at both China national and international level.

II. LEGISLATIVE DEVELOPMENT

The past three decades have witnessed an amazing acceleration in the rate of, and significant progress in the quality of, legislation in China. According to the official statement of the National People's Congress ("NPC"), the highest state body and the supreme legislature in the PRC,¹³ by the year of 2010, "a socialist legal system with Chinese characteristics" has been successfully established as planned, and allows China to claim to have a systematic legal system.¹⁴

With such a setting, it is submitted that a relatively developed legal regime for cultural property with Chinese characteristics has been shaped which constitutes an important part of the Chinese legal system.¹⁵ If we compare the Chinese legal regime for cultural property to a huge tower, then the Constitution may be classified as the foundation, the relevant national statutes, the Law for the Protection of Cultural Objects and Criminal Code, in particular, as the framework, the administrative regulations and rules concerned the auxiliaries, and the international conventions to which China is a party the roof.¹⁶

¹³ See, Lin, Feng, *Constitution Law in China*, 2000, p. 80.

¹⁴ At the 15th National Congress of the Communist Party of China, the rule of law principle was established as a fundamental principle for the administration of the country, and in order to implement the principle the Party put forward a legislative plan pursuant to which the socialist legal system with Chinese characteristics would be shaped up by 2010. To ensure the accomplishment of the legislative plan, the National People's Congress, China's supreme legislature, has accelerated legislation after 2005. See Zhongguo Gongchandang Dishiwuci Quanguo Daibiaodahui Wenjian Huibian, *Collection of Documents of the Fifteenth National Congress of the Communist Party of China*, 1997, 5-6; See also Huo, Zhengxin, "China's Codification of Conflicts Law: Latest Efforts", 51 *Seoul L.J.* 279, 2010, p. 283; <http://finance.people.com.cn/GB/14115240.html>, last visited on November 16, 2012.

¹⁵ Huo, Zhengxin, *Zhuhisuo Haiwai Liushi Wenwu de Falv Wenti (The Restitution of Chinese Cultural Objects Lost Overseas)*, 2013, p. 258.

¹⁶ Under the Chinese Legal system, the constitutional law has the highest legal force, laws have a higher legal force than administrative regulations. However, the Constitutional law of China does not provide an answer to the relationship between domestic Chinese law

1. *The Constitution of the PRC*

The current Constitution of the PRC was enacted in 1982, which has a preamble and four chapters, including 138 articles. The 1982 Constitution reflects Deng Xiaoping's determination to lay a lasting institutional foundation for domestic stability and modernization which provides a legal basis for the broad changes in China's social and economic institutions and significantly revises government structure.

This Constitution formally confirms that the constitution is as the pinnacle of the legal hierarchy and is the foundation on which other legislation is enacted. No laws or administrative regulations and rules may contravene the Constitution. Such a hierarchy of primary and subordinate legislation has been held to be essential for the integrity of the Chinese legal system.¹⁷

Entitled "General Provisions", Chapter one of the 1982 Constitution provides the guidelines of the Chinese political and legal system where the principle of protecting cultural property is embodied. Article 22 (2) states that:

The state protects places of scenic and historical interest, valuable cultural monuments and relics and other important items of China's historical and cultural heritage.

The significance of the above provision cannot be overestimated, insofar as it is with this rule that we encounter the first elaborate expression of the protection of cultural property in the Chinese Constitution. Because of the supreme status of the Constitution within the Chinese legal system, Article 22(2), undoubtedly, becomes the foundation on which China's legal regime for cultural property is based.

2. *National Statutes*

Pursuant to the Constitutional Law of China, the NPC and its Standing Committee are the national legislatures.¹⁸ The national laws enacted by the

and international treaties or conventions to which China is a party. See Chen, Albert Hung-ye, *An Introduction to the Legal System of the People's Republic of China*, 3rd ed., 2004, p. 113.

¹⁷ The Communist Party of China established the PRC on Oct.1 1949, since then, the PRC has had one Interim Constitution and four Constitutions. The Interim Constitution is the Common Program enacted by the National Political Consultative Conference in 1949. The four constitutions were enacted by the NPC in 1954, 1975, 1978 and 1982 respectively. See, Lin, Feng, *Constitution Law in China*, 2000, p. 12.

¹⁸ Unlike the legislature in other country, the NPC meets only once a year for no more than 2 weeks. It is foreseeable that the number of laws that can be enacted by the NPC during that short period is quite limited. To best represent the supreme status of the NPC, only certain kinds of national law are enacted by the NPC. When the NPC is not in session, the

NPC or its Standing Committee have lower legal force than the Constitution, but higher legal forces than the administrative regulations, rules and local regulations.¹⁹ Since the 1980s, the NPC and its Standing Committee have enacted various national statutes that have direct bearing on the protection of cultural property and prevention of its illicit traffic among which the Law for the Protection of Cultural Objects and the Criminal Code are most relevant.

A. The Law of the PRC on the Protection of Cultural Objects

The year of 1982 is historic in that the PRC adopted not only its new Constitution but also its first national statute on the Protection of Cultural Objects -“The Law of the PRC on the Protection of Cultural Objects” (hereinafter referred to as “Cultural Objects Law”). The Cultural Objects Law was adopted at the 25th Session of the Standing Committee of the Fifth National People’s Congress on November 19, 1982, coming into force on the same day, and is still effective at present after amendments, assuming a prominent role in the protection of cultural property in China.

When first enacted, the Cultural Objects Law contains 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).

Though relatively simplistic and rather conservative judging by today’s standards, the 1982 Cultural objects Law is significant in the following as-

NPCSC exercises legislative authority. Under the 1982 constitution, both NPC and NPCSC enjoy wide legislative authority. Their legislature authority can be analyzed as follows. First, the NPC has the power to amend the Constitution. Second, The NPC has the authority to enact and amend basic laws pertaining to criminal offences, civil affairs, state organs and other matters. Third, The Standing Committee enacts and amends all laws except laws that should be enacted and amended by the NPC. When the NPC is not in session, its Standing Committee may partially supplement and amend laws it enacted, provided that the changes do not contravene the laws’ basic principles. See, Lin, Feng, *Constitution Law in China* 79-80, 2000; Fa, Xian, Constitution, article 57, 58, 1982 (P.R.C.).

¹⁹ Fa, Lifa, Legislation Act, articles 80, 82, 2000, P.R.C.

pects: first, it provides the definition and the categories of cultural objects, sets up the principles in the protection of cultural objects, and charges the Peoples' Governments at all levels with responsibility for protecting and administering cultural objects.²⁰ Second, it establishes the state ownership of undiscovered cultural objects and prohibits their export without state authorization, and allows for their expropriation and confiscation in case of illegal export.²¹ Third, it allows for both state ownership and private ownership of cultural objects. Of the latter, it noted that “[O]wnership of cultural objects handed down from generation to generation which belongs to collectives or individuals shall be protected by state laws. Owners of the cultural objects shall abide by the relevant state regulations governing the protection and control of cultural objects”.²² This restatement of private cultural property ownership rights in the PRC marked a very big change in Chinese law.²³ Fourth, it spells out the restrictions on the export of cultural objects, as Chapter VI reads as follows:

Taking Cultural objects out of the PRC

Article 27 Cultural objects to be exported or to be taken out of the country by individuals shall be declared to the Customs in advance and examined by the department for cultural administration of a province, and autonomous region or a municipality directly under the Central People's Government designated by the state department for cultural administration before export certificates are granted. Cultural objects leaving the country shall be shipped out at designated ports. Cultural objects which, after examination, are not permitted to leave the country may be requisitioned by the state through purchase.

Article 28 it shall be prohibited to take out of the country any cultural objects of significant historical, artistic or scientific value, with the exception of those to be shipped abroad for exhibition with the approval of the State Council.

Generally speaking, the enactment of the Cultural objects Law in 1982 is a benchmark that China has initiated the task of building a modern legal regime for cultural property.

Nonetheless, with the fundamental restructuring of Chinese economic and social system during the 1980s and 1990s, the 1982 Cultural Objects Law

²⁰ See, *Zhonghua Renmin Gongheguo Wenwu Baohufa* (*The Law of the PRC on the Protection of Cultural objects*), articles 2, 3, 16, 17, 1982.

²¹ See, *Zhonghua Renmin Gongheguo Wenwu Baohufa* (*The Law of the PRC on the Protection of Cultural objects*), articles 4, 25, 30, 1982.

²² It goes on to impose restrictions on the private sale of relics in private collections and forbids private sales to foreigners. See *ibidem* at articles 5, 25, 1982.

²³ Cuno, James, *Who owns Antiquity? Museums and the Battle over Our Ancient Heritage*, 2008, p. 95.

had revealed more and more problems and defects which could no longer meet the requirements of the new situation. Under such a circumstance, the substantive amendment of the Law was put on the agenda of the NPC. Up to now, the Cultural Objects Law has been amended three times: in 1991, 2002, and 2007 respectively among which the amendment in 2002 was substantive, whereas the rest amendments were but minor modification of certain articles.²⁴ Hence, the amendment in 2002 is worthy of special concern.

After the amendment in 2002, the Cultural Objects Law has expanded from 33 articles to 80 articles, and the chapters have been reshaped 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 major changes made by the amendment include:

First, the amendment establishes the lodestar of the administration of cultural objects in China, as Article 4 provides that:²⁵

The work concerning cultural objects shall follow the following principles: (i) giving priority to the protection of cultural objects, (ii) attaching primary importance to their rescue, and (iii) making rational use of them and tightening control over them.

Second, the amendment bans the sacrifice of cultural relics for economic development which makes it clear that the Governments shall incorporate the undertaking of the protection of cultural relics into their own plans for national economic and social development and the expenses entailed shall be listed in their own budgets.²⁶

Third, the amendment expands the definition of cultural objects,²⁷ im-

²⁴ To be more specific, the amendment in 2007 was to revise Article 30 and Article 31 of the Law; the amendment in 2002 was a substantive reshaping of the Law, and the amendment in 2007 was to revise Article 22, Article 23, and Article 40 of the Law. Huo, Zhengxin, *Zhūisuo Hǎiwài Lǎishi Wénwù de Fǎw Wéntí* (*The Restitution of Chinese Cultural Objects Lost Overseas*), 2013, p. 257.

²⁵ *Zhonghua Renmin Gongheguo Wenwu Baohufa* (*The Law of the PRC on the Protection of Cultural Objects*), article 4 (revised in 2002).

²⁶ *Ibidem*, at article 9.

²⁷ Article 2 adds a new paragraph according to which important historical sites, material objects and typical buildings of modern and contemporary times related to major historical

proves the chapters on immovable cultural objects and archaeological excavations.²⁸

Fourth, it establishes officially sanctioned stipulates cultural objects shops and auction enterprises to assist in cataloging and tracking cultural property. These two mechanisms for establishing a licit cultural property market are distinct, which means that auction enterprises cannot establish cultural objects stores and vice versa; however, they share the similar requirement that administrative officials must be permitted to examine and verify each cultural object for sale or exchange.²⁹ More importantly, Article 58 grants the government broad power to “designate an institution for the collection of state-owned cultural objects to enjoy the priority in purchasing the valuable” objects up for auction during the mandatory examination period under article 56.³⁰ In addition, cultural objects shops and auction enterprises shall keep records of cultural objects they purchase, sell, or auction, and submit the records to the administrative department of cultural objects for centralized cataloging.

Fifth, it prohibits certain valuable grade-one cultural objects from being exported from China at all, except in certain and limited cases for exhibition,³¹ and incorporates the procedure for temporary entry of cultural objects and their re-exit.³²

Sixth, it states that where cultural relics in the collection of a cultural institution are stolen, robbed or missing, the institution shall immediately report the case to a public security organ and at the same time to the competent administrative department for cultural objects.

events, revolutionary movements or famous people that are highly memorable or are of great significance for education or for the preservation of historical data shall be protected by the Law. *Ibidem* at article 2.

²⁸ Huo, Zhengxin, *Zhuhisuo Haiwai Liushi Wenwu de Falv Wenti (The Restitution of Chinese Cultural Objects Lost Overseas)*, 2013, 257.

²⁹ *Zhonghua Renmin Gongheguo Wenwu Baohufa (The Law of the PRC on the Protection of Cultural Objects)*, articles 55, 56,57 (revised in 2002).

³⁰ *Ibidem*, at article 58.

³¹ *Ibidem*, at articles 60-63. The 2002 Amendment divides cultural objects into “valuable” cultural objects and “ordinary” cultural objects. Valuable cultural objects are further broken down into grade-one, grade-two, and grade-three cultural objects. Grade-one cultural objects are “especially important for historic, artistic, and scientific values; Grade-two are those cultural objects that have “important” cultural value. Grade-three cultural objects are “relatively important” to China’s cultural heritage. Cultural objects deemed ordinary are those that only have “certain historic, artistic, and scientific value. *Ibidem*, at articles 2.3.4.

³² *Ibidem*, at article 63. See also Taylor, Jason M., “The Rape and Return of China’s Cultural Property: How can Bilateral Agreement Stem the Bleeding of China’s Heritage in a Flawed System?”, 3 *Loyola U. Chicago Int’l L.R.*, 2007, p. 247.

Last, but not least, it consolidates the legal liabilities and strengthens the implementation mechanism.³³

The amendment of the Cultural Objects Law in 2002 are geared to the adaptation to the new situation with the purpose of strengthening the protection of cultural property, preventing the practices by some local governments of sacrificing cultural objects for economic development and, reinforcing the legal measures to fight against the crimes against cultural property.

B. *The Criminal Code*

The Criminal Code of the PRC has played an important role in combating crimes against cultural property.³⁴ When first enacted in 1979, the Criminal Code contained two articles which concerned criminal offences against cultural property. According to Article 173, those who are engaged in illicit export of cultural objects shall face the sentence of three years to life imprisonment plus the confiscation of the property concerned; pursuant to Article 174, those who damage or destroy cultural objects or places of historical and cultural interest under State protection, shall be sentenced to fixed-term imprisonment of not more than seven years.

Though these two articles cannot cover all types of crimes against cultural property, their incorporation into the Criminal Code manifested the determination of the Chinese Government to protect the cultural property from illicit traffic and damage, which exerted a considerable influence in deterring the crimes against cultural property.

Since the middle 1980s, as the country opened its door, and initiated fundamental reform in almost every aspect, China has entered a radial transitional period. With the weakening of state control, economy booms, yet crimes, including the crimes against cultural property, became more and more serious. Under such a historic circumstance, the NPC passed the bill of amending the Criminal Code substantively on March 14, 1997. In the field of cultural property, the Amended Code has devoted an 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 property.

³³ *Ibidem*, at articles 64-79.

³⁴ The Criminal Code of the PRC was enacted in 1979 and was substantively amended in 1997. Since 1997, it has been amended eight times in August 2001, December 2001, December 2002, February 2005, June 2006, February 2009, and February 2011 respectively.

Compared with the Code of 1979, the Amended Code of 1997 has significantly expanded the criminal offences against cultural property, and considerably increased the criminal penalty.

To be more specific, the Section of “Crimes of Obstructing Cultural and Historic Objects Control” includes six articles which spell out eight categories of crimes as follows:³⁵

intentionally damaging or destroying cultural objects (article 324(1)); intentionally damaging or destroying places of historical and cultural interest (article 324(2)); negligently damaging or destroying cultural objects (article 324(3)); selling or presenting as a gift to a foreigner any valuable cultural object in violation of the laws or regulations on protection of cultural objects (article 325); reselling the cultural object of which the sale or purchase is prohibited by the State, for the purpose of profit (article 326); 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); illicit excavation of a site of ancient culture or ancient tomb of historical, artistic or scientific value (Article 328(1)); and illicit excavation of fossils of paleoanthropoids or paleovertebrates of scientific value which is under State protection (Article 328(2)).

Moreover, under Article 151 and Article 264, stealing precious cultural objects and the cross-border transportation of “prohibited cultural objects” out of China, are serious criminal offences. The actual criminal penalties for actions prohibited by the Amended Code of 1997 range from fines and confiscation of cultural objects to prison sentences, an in exceptionally serious or heinous cases, even death.³⁶ Obviously, the employment of harsher penalties, including the death penalty, to the perpetrators of these crimes reflects the resolution of the Chinese government to prevent the proliferation of the crimes against cultural property.

Notwithstanding the positive impact on the fight against various crimes, the Amended Code of 1997 has aroused hot debate and criticism. The clamor comes mainly from the international community, and stems from the view that the number of crimes that can be punished with a death sentence under the Amended Code of 1997 is too many,³⁷ which is a major

³⁵ Xue, Xinfu, *Criminal Law*, Mingxuan Gao & Kechang Ma eds., 2000, pp. 569-576.

³⁶ The Amended Code of 1997 clearly states that those who commit illicit excavation, stealing or smuggling cultural objects may face death penalty when the offences are exceptionally serious.

³⁷ As Shishi Li, Director of the Legislative Affairs Commission of the NPC Standing Committee pointed out, there are in total 68 crimes under the current Criminal Law that

reason that China has, in total numbers, the world's highest number of executions every year.³⁸ Against this background, reducing the use of capital punishment has been included in the legislative plan of the NPC since the entry of the 21st century.

After some years' discussion and preparation, the Standing Committee of the NPC passed the Amendment VIII to the Criminal Code on February 25, 2011 which has reduced the number of crimes punishable by death by 13 to 55.³⁹ It was the first time the PRC has reduced the number of crimes subject to the death penalty since the Criminal Code took effect in 1979, which has been regarded as an effort to respect life and improve human rights by the Chinese government.

It is particularly worth emphasizing that after this amendment, all crimes against cultural objects, including, stealing and smuggling of cultural objects, illicit excavating and robbing ancient cultural sites or ancient tombs, and excavating and robbing fossil of paleoanthropoids or paleovertebrates, have been no longer subject to the death penalty. Hence, the Amendment VIII to the Criminal Code has considerably softened the penalties imposed on cultural property related crimes. Though Amendment VIII has received high evaluation in the legal community both at home and abroad,⁴⁰ many Chinese officials and experts in the community of cultural heritage expressed their concern who worry that such amendment would lead to the escalation of the criminal offences against cultural property.⁴¹

can be punished by death; he admitted that this is too many and that the number should be reduced. "Xingfa Xiuzheng An Cao'an Ni Quxiao Daoqie Zui Deng 13 ge Sixing Zuiming (*Draft Amendment to the Criminal Law Would Remove Death Penalty for Thirteen Crimes, Including Larceny*), *Xinhua*, August 23, 2010, http://news.xinhuanet.com/lega/2010-08/23/c_12473736.htm, last visited on December 16, 2012.

³⁸ Bi, Yingxi, "On the Death Penalty for Drug-Related Crime in China", 2 *Human Rights and Drugs* 29, 2012.

³⁹ The Amendment VIII abolished the death penalty for following 13 crimes, 19% of the total number: smuggling of cultural objects; smuggling of precious metals; smuggling of precious animals or their products; smuggling of ordinary freight and goods; fraud connected with negotiable instruments; fraud connected with financial instruments; fraud connected with letters of credit; false invoicing for tax purposes; forging and selling value-added tax invoices; larceny; instructing in criminal methods; illicit excavating ancient cultural sites or ancient tombs, and illicit excavating fossil of paleoanthropoids or paleovertebrates. 13 Crimes Removed from Death Penalty List, http://www.china.org.cn/china/NPC_CPPPCC_2011/2011-02/25/content_22006335.htm, last visited on December 16, 2012.

⁴⁰ *Idem*.

⁴¹ See, Zhengxin Huo, *Zhuhisuo Haiwai Liushi Wenwu de Falu Wenti (The Restitution of Chinese Cultural Objects Lost Overseas)*, 2013, p. 256.

Though their worry is not irrational, the author does not favor such a view for the following reasons. First, judicial practice after the implementation of the Amended Code of 1997 has shown that capital punishment was not much deterrent to those who committed crimes against cultural property, as the crimes have been on the increase since the late 1990s in spite of the stringent criminal penalty. This is evidenced by the steady flow of illegally exported or illicit obtained Chinese antiquities appearing on the international art market.

Second, and more importantly, the abolition of the death penalty in cultural property related crimes can facilitate international judicial cooperation in combating illicit traffic of cultural property. As capital punishment is a major bar to extradition recognized by international law and the domestic law of many states, abolishing it, apparently, removes a legal obstacle when the Chinese government requests the relevant foreign authorities to extradite the alleged criminals committing cultural property related crimes.

3. *Administrative Regulations and Rules*

Under the Constitution and the Legislation Act of the PRC, the State Council (*i.e.*, the Central People's Government the PRC) has the authority to issue administrative regulations within its authority provided that they do not contravene the Constitution or national laws; the departments within the State Council are entitled to promulgate administrative rules provided they are not in conflict with either the Constitution, national laws or administrative regulations. Hence, administrative regulations and rules are sources of law in the Chinese legal system.⁴²

Since the 1980s, the State Council, the Ministry of Culture as well as the State Administration of Cultural Heritage (SACH) have issued a number of administrative regulations and rules to implement the relevant national laws and to fight against illicit traffic of cultural property.⁴³

⁴² Chen, Albert Hung-ye, *An Introduction to the Legal System of the People's Republic of China* 112, 3rd ed., 2004.

⁴³ After the establishment of the PRC, the State Bureau of Cultural Relics was established to protect relics and archaeological sites as well as help develop museums (though the agency languished during the political turmoil of the Cultural Revolution). Its cause was revitalized with the establishment of the State Cultural Relics Enterprises Management Bureau in 1973 to oversee the protection of cultural heritage and the State Administration of Cultural Heritage (SACH) in 1988, under the jurisdiction of the Ministry of Culture, as the encompassing agency for conservation of Chinese culture and heritage. After the reform of the organizational structure of the state council in the 1990s, the SACH has gained a

Among these administrative regulations promulgated by the State Council, the “Regulations for the Implementation of the Law of the PRC on the Protection of Cultural Objects,”⁴⁴ undoubtedly, is the most important one. Adopted on May 13, 2003, and effective as of July 1, 2003, the Regulations consist of eight chapters which are corresponding to the respective chapter of the Cultural Objects Law. The concrete provisions contained in the Regulations are very important to improve the applicability of the Law and to strengthen its implementation mechanism.

In order to prevent illicit export of cultural property, the Ministry of Culture has enacted a couple of administrative rules among which the following two are especially relevant: (i) Measures for the Administration of Museums,⁴⁵ (ii) Administrative Measures for the Examination and Verification of the Entry and Exit of Cultural Objects.⁴⁶

The highlights of Measures for the Administration of Museums are as follows: First, it emphasizes that governments shall incorporate the museum undertaking into its own planning on national economy and social development, and shall incorporate the expenses incurred from the museum undertaking into the fiscal budget of the same level.

Second, it makes it clear that the SACH takes charge of the museum-related work of the whole country, and local cultural heritage administrative department supervise and administrate the museums within their administrative jurisdictions.

Third, it spells out strict requirements for the establishment of a museum which include: (i) employing professional technical and managerial personnel, (2) equipping with safety and fire control facilities in line with the provisions of the state: (3) submitting its inventory and evidence of lawful provenance of its collections.

semi-independent status. Though the head of the SACH concurrently holds the position of vice minister of the Ministry of Culture, the two departments usually perform their functions independently. It should be noted that, the authorities and functions of respective department are not well-defined or clearly demarcated. For example, although there exists a principle that the SACH is responsible for Conservation of tangible cultural heritage while the Ministry of Culture intangible cultural heritage, the latter administers a number of national museums, e.g., The Palace Museum (the Forbidden City), the National Museum of China.

⁴⁴ *Zhonghua Renmin Gongheguo Wenwu Baohufa Shishi Tiaoli (Regulations for the Implementation of the Law of the PRC on the Protection of Cultural Objects)*, 2003 (PRC).

⁴⁵ Bowuguan Guanli Banfa [Measures for the Administration of Museums], Order of The Ministry of Culture, No.35 (2005), Dated Dec.22, 2005.

⁴⁶ Wenwu Jinchujing Shenhe Guanli Banfa [Administrative Measures for the Examination and Verification of the Entry and Exit of Cultural Objects] Order of The Ministry of Culture, no.42, 2007, Dated July 3, 2007.

Fourth, it establishes the measures for the operation of museums and the administration of their collections.

The promulgation of Administrative Measures for the Examination and Verification of the Entry and Exit of Cultural Objects is devoted to safeguarding precious Chinese cultural object from illicit exportation; therefore, its focus is on the examination and verification of the exit of cultural objects instead of their entry.⁴⁷ Indeed, in the same year, the SACH issued a similar, and more specific, administrative order entitled “Criteria of the Examination and Verification of the Exit of Cultural Objects”.⁴⁸ Pursuant to these two documents, the year of 1949 and that of 1911 are two basic tests for the export prohibition of Chinese cultural objects; to be more specific, the cultural objects produced or made before 1949 which are of historical, artistic or scientific value are prohibited from export in principle except that their export have been approved by the competent authority; those before 1911, however, are prohibited from export without any exception.

In addition to issuing administrative regulations and rules, the Chinese government has established a national “Cultural Heritage Day” to be celebrated annually on the second Saturday of June, which is one of the most important parts of China’s culture contribution. The purpose of this Day is to create a good atmosphere of cultural heritage and to enhance the recognition about the importance of protecting cultural heritage. The Day was first celebrated on 10 June in 2006.⁴⁹

4. *International Conventions*

In a globalized world, no state can prevent illicit traffic of cultural property by itself, thus, the international community has made continuous efforts to draft international conventions and to enhance international cooperation. So far, there are a number of international conventions that have been adopted which have been playing an increasingly important role in the fight against illicit traffic of cultural property. As far as China is concerned, it has ratified four conventions in the field of cultural property.

⁴⁷ This document generally does not provide the rules on the examination and verification of the entry of cultural objects except for the temporary entry of cultural objects for exhibition. See *ibidem*, at article 14.

⁴⁸ *Wenwu Chujing Shenhe Biaozhun (Criteria of the Examination and Verification of the Exit of Cultural Objects)*.

⁴⁹ http://www.chinaculture.org/gb/en/2006-06/05/content_82491.htm, last visited on December 20, 2012.

On November 22, 1985, the Standing Committee of the NPC ratified the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Chinese government deposited its instrument of accession on December 12, 1985.⁵⁰

On September 25, 1989, the State Council accepted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the 1970 UNESCO Convention).⁵¹

On May 7, 1997, China deposited its instrument of accession to the Convention on Stolen or Illegally Exported Cultural Objects (the 1995 UNIDROIT Convention) and made the following declarations simultaneously: (i) the accession to the Convention does not indicate that China acknowledges the legitimacy of any cultural object stolen or illegally exported prior to the Convention. China reserves its rights to the restitution or return of the cultural objects stolen or illegally exported before the Convention came into effect; (ii) Pursuant to Article 3(5) of the Convention, China states that a claim concerning the restitution of the stolen cultural objects is subject to a time limitation of 75 years, and reserves its right to extend the time limitation as provided in its law in the future; and (iii) Under article 8 of the Convention, a claim under Chapter II and a request under Chapter III may be brought directly before the competent Chinese court, or indirectly by requesting the administrative department for cultural objects to transfer such claim or request to the competent Chinese court.

On October 31, 1999, the Standing Committee of the NPC ratified the Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1954 Hague Convention) its First Protocol and the Chinese government deposited its instrument of accession on January 5, 2000.⁵²

Therefore, these four conventions have been effective in China which have been exerting a significant role in the protection of cultural property and the prevention of the illicit traffic.

⁵⁰ http://www.npc.gov.cn/wxzl/gongbao/2000-12/16/content_5001719.htm; <http://whc.unesco.org/en/statesparties/>, <http://whc.unesco.org/en/statesparties/>, last visited on December 21, 2012.

⁵¹ Zhonghua Renmin Gongheguo Guowuyuan Gongbao (The Bulletin of the State Council of the People's Republic of China), 23 *Bulletin of the State Council*, 1989, p. 851 (P.R.C.).

⁵² China is an original Member of the United Nations, the Charter having been signed and ratified in its name, on 26 and 28 September 1945, respectively, by the Government of the Republic of China, which continuously represented China in the United Nations until 25 October 1971. China is likewise an original Member of UNESCO, the Constitution having been signed and accepted in its name by the Government of the Republic of China which continuously represented China in UNESCO until 29 October 1971. http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html#STATE_PARTIES, last visited on December 21, 2012.

It should be noted that China so far has not accepted the Second Protocol of the 1954 Hague Convention, neither has it ratified the Convention on the Protection of Underwater Culture Heritage. 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.⁵³ As China has various territorial disputes in the Yellow Sea (with 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.

Another issue worthy of notice is that the Constitution of the PRC does not provide an approach to solving the potential conflicts between domestic Chinese law and the international conventions to which China is a party. What we can find is an article contained in the General Principle of the Civil Law (GPCL) which provides that in the aspect of civil law (private law), international treaty stipulations prevail over domestic Chinese law when in conflict.⁵⁴ Given that the 1995 UNIDROIT Convention basically falls within the scope of private law, the author submits that it prevails over domestic Chinese in case of conflict; whereas, it remains doubtful if the rest three conventions are in conflict with domestic Chinese law.

III. LAW ENFORCEMENT AND INTERNATIONAL COOPERATION

Since the 1980s, the Chinese government has fully realized the importance and value of the cultural objects, and has sought to prevent their exportation through a legal regime designed to keep the most valuable cultural objects within the country. In the process of fighting against illicit traffic of cultural property, the Chinese government has accumulated some valuable experience in improving its law enforcement mechanism.

What's more, as the increased prosperity brought by economic liberalization has revived the Chinese domestic market for artifacts and antiquities; China has become an increasingly important art market since the

⁵³ *Guojifa yu Bijiaofa Shiyexiade Wenhua Yichan Baohu Wenti Yanjiu (The Protection of Cultural Heritage from the Perspective of International Law and Comparative Law)*, Yujun Guo ed., 2011, p. 257.

⁵⁴ As article 142(2) of the GPCL provides as follows: *If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.* Zhonghua Renmin Gongheguo Minfa Tongze (GPCL) article 142, 1986 (PRC).

late 1990s.⁵⁵ Within such a setting, China has to deter the illegal flow of cultural property both out of and into the Country. In a globalized world, China, like any other country, cannot achieve this goal by itself; therefore, establishing and enhancing international cooperation has become all the more important.

1. *Law Enforcement Mechanism*

In order to implement the legal regime for cultural property and to halt the illegal flow of cultural property out of China, the Chinese government has taken various measures and has gradually created a comprehensive law enforcement mechanism.

The SACH has so far set up seventeen professional institutions in charge of examination and verification for the entry and exit of cultural objects across the country. Only those cultural objects that have satisfied the requirements of the laws and administrative regulations & rules would be issued export or entry permits. Should these institutions find any evidence of illegal traffic, they would report it to the customs and the public security authority immediately.

According to the statistics, these professional institutions have played a vital role in stemming the illegal cross-border flow of cultural property, as Xinchao Song, Vice-Director of the SACH addressed in a national conference on the administration of the export and entry of cultural objects, “from 2010 to 2011, these institutions had examined more than 600,000 cultural objects which were applied for export. After examination, more than 30,000 were classified as the cultural objects prohibited from export”.⁵⁶

Since 2001, the SACH has initiated several national surveys of the cultural objects in the collection of public museums and similar institutions, and have established a national inventory of protected state-owned cultural property.

Moreover, the State Council has conducted a national survey of the immovable cultural property from 2007 to 2011, according to which China has more than 760,000 pieces of registered immovable cultural property.⁵⁷

⁵⁵ Lee, Keun-Gwan, *An Overview of the Implementation of the 1970 Convention in Asia*, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Lee_en.pdf, last visited on December 21, 2012.

⁵⁶ <http://www.ccrnews.com.cn/102789/87428.html>, last visited on December 21, 2012.

⁵⁷ <http://www.sach.gov.cn/tabid/294/InfoID/31431/Default.aspx> l, last visited on December 21, 2012.

In October 2012, the State Council announced the start of a national survey of the movable cultural property. Pursuant to the plan, the survey will last four years till December 2016.⁵⁸ These surveys have been and will be highly instrumental in protecting cultural property from theft and smuggling.

Another important measure taken by the Chinese government is establishment of the National Joint Committee on the Safety of Culture Property. Realizing the barriers between different departments have sometimes hampered the efficient enforcement of law, the State Council decided to establish the National Joint Committee on the Safety of Culture Property in May 2010. The Joint Committee consists of the Ministry of Culture, the Ministry of Public Security, the Ministry of Land and Resources, the Ministry of Environmental Protection, the Ministry of Housing and Urban-Rural Development, the General Administration of Customs, the State Administration of Industry and Commerce, the State Administration of Tourism, the State Administration of Religious Affairs and the SACH, with its secretariat administered by the SACH.⁵⁹ The Joint Committee will hold a plenary session at least once a year in which the Culture Minister acts as the chairperson and the heads of other departments as the members. Apparently, the major purpose of establishing the Joint Committee is to overcome the barriers between different departments and to strengthen the protection of cultural property from all kinds of crimes.

Indeed, in order to further intensify collaboration between the administrative departments for cultural heritage and the public security authorities, the SACH and the Ministry of Public Security decided to set up the Collaborative Working Group on the Fight against Cultural Property Crimes in September 2012. According to the notice jointly issued by the two departments, the Working Group will hold a meeting once every six months in which the Ministry of Public Security and the SACH will communicate information, discuss and analyze the situation of the safety of cultural property, and supervise and guide the investigation of serious criminal offences. The notice emphasizes that the two departments are starting to establish a national database of the crimes against cultural property accessible to both the administrative authorities for cultural heritage and public security authorities at all levels across the country.⁶⁰ By the end of 2012, the national database has contained 5,152 records.

⁵⁸ http://www.gov.cn/zwqk/2012-10/15/content_2244022.htm, last visited on December 21, 2012.

⁵⁹ http://kj.sach.gov.cn/news_detail.asp?t_id=10457, last visited on December 21, 2012.

⁶⁰ <http://culture.people.com.cn/n/2012/0907/c22219-18946463.html>, last visited on December 22, 2012.

According to the statistics provided by the SACH to the author, the establishment of the National Joint Committee on the Safety of Culture Property in which all relevant departments participate, and that of the Collaborative Working Group on the Fight against Cultural Property Crimes have been proved to effective means to enhance cooperation between different law enforcement agencies and to create an uniform law enforcement mechanism. For example, from January 2010 to December 2011, out of the effective operation between the relevant departments, the Ministry of Public Security and the SACH in particular, 1,097 crimes against cultural property (among which 687 are excavating ancient cultural sites or ancient tombs) have been detected, 281 criminal gangs have been cracked, 1,849 suspected criminals have been arrested, and more than 7,000 antiquities have been seized among which 22 are grade-one cultural objects, 228 are grade-two and 853 are grade-three.

2. *International Cooperation*

In a globalized world, countries have realized the importance of international cooperation in creating an effective, enforceable international regime for the protection of cultural property from illicit traffic and other crimes. China, as a major source state, and an emerging art market, has made significant progress in establishing and strengthen international cooperation through various channels.

In addition to joining the two major international instruments designed to restrict the illegal flow of cultural property (i.e., the 1970 UNESCO Convention and the 1995 UNIDROIT Convention), China has sought to sign bilateral agreements with foreign countries. Such bilateral agreements can overcome certain defects of the multilateral international conventions provided that the parties are simultaneously contracting states to those conventions, and can establish more specific, feasible and efficient legal approaches to preventing illicit traffic of cultural property between the parties.

By the end of May 2012, China has signed bilateral agreements on the protection of cultural property from theft, illegal excavation and illicit traffic with fifteen countries. There are two points, *inter alia*, which are worthy of special notice: First, these countries include not only the source nations, such as Greece and Peru, but also the market nations, such as the United States and the Australia; Second, most of these countries are the contract-

ing parties to the 1970 UNESCO Convention.⁶¹

Signing bilateral agreements effectively improves the international cooperation between China and these countries which will ultimately slow the tide of illicit traffic of cultural property worldwide. For example, pursuant to the agreement concluded between China and the U.S. in 2009, the U.S. government has returned a number of ancient artifacts to China;⁶² the Australian government has handed back illegal exported dinosaur eggs to China under the bilateral agreement and the 1970 UNESCO Conventions.⁶³

On the other hand, as China has become an important art market, it is of equal importance that the Chinese government strictly abide by these agreements to help other countries fight against illicit exportation of cultural property. According to the statistics provide by the SACH, in the year of 2012, the Peru government submitted nine requests to the Chinese government to assist in seizing its illicitly exported cultural property (concerning 22 pieces of cultural property in total). Once the Chinese government received the request, it notified the customs along the borders immediately and publicized the information of the illicitly exported cultural property in the mass media. In the same year, the Japanese government submitted two requests to the Chinese government, asking the Chinese authority to help seize two pieces of illicit exported cultural property. Though China and Japan have not signed bilateral agreement in this field, they are both the contracting states to the 1970 UNESCO Convention; therefore, the Chinese government notified the customs and public security authorities of the requests of the Japanese government without delay.

Moreover, the Chinese government has attached great importance to the role of the relevant international organizations (the UNESCO and the INTERPOL in particular) in fighting against illicit traffic of cultural property, and has established and consolidated the relation with them to prevent the illegal cross-border flow of cultural property. For instance, China has sent delegations to attend the meetings of the state parties to the 1970 Conventions and those of the 1995 Conventions, and has actively participate in the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation. China has also been actively engaged in various kinds of activities

⁶¹ These countries are Peru, Italy, India, the Philippines, Greece, Chile, Venezuela, the United States, Turkey, Ethiopia, Austria, Egypt, Mongolia, Mexico and Columbia. See http://www.gov.cn/gzdt/2012-05/14/content_2136536.htm, last visited on December 22, 2012.

⁶² <http://unesco.usmission.gov/us-returns-chinese-artifacts.html>, last visited on December 23, 2012.

⁶³ See Greenfield, Jeanette, *The Return of Cultural Treasures*, 3rd ed., 2007, pp. 428-429.

organized by the International Criminal Police Organization (INTETPOL) and the United Nations Office on Drugs and Crimes (UNODC), including international seminars, conferences, and training programs. The close cooperation with these international organizations has helped China strengthen its ability to combat the crimes against cultural property.

IV. CONCLUDING REMARKS

Since the 1980s, the Chinese government has made consistent efforts to prevent illicit traffic of cultural property. Significant progress has been made in legislation, judicial practice and international cooperation since then. Nevertheless, Chinese cultural heritage is still at risk. According to statistics from the latest national survey of the immovable cultural property from 2007 to 2011, in the past 30 years, more than 40,000 unmovable relics have vanished, with half of them destroyed by construction work.⁶⁴ In March 2011, the then Director of the SACH, Mr. Jixiang Shan lamented that “nowadays, thwarting illicit exportation of cultural property has become extremely difficult, tom robbing, cross-border transportation, and selling have shaped a seamless chain, even those cultural objects of huge size and enormous weight can be transported from its original site to international market within three days”.⁶⁵

Therefore, the fight against illicit traffic of cultural property in China is facing serious challenges in the 21st century, which is doomed to be a protracted war. Analytically, the formidable challenges are posed by various complex elements.

First, being a country of vast territory and enormous amount of cultural property, the task of protecting cultural property (especially the undiscovered and outdoor cultural relics) in China as well as halting the illegal follow of cultural property out of China, objectively speaking, are herculean tasks of almost impossible magnitude.

Second, the skyrocketing price of Chinese cultural property in the international market inevitably induces the crimes against cultural property, as Professor Dutra noted, “the flow of Chinese cultural antiquities will go unshaken so long as there is an eager market for such items outside of China”.⁶⁶

⁶⁴ <http://www.fmcofrc.gov.hk/eng/xwdt/jzzh/t990570.htm>, last visited on December 26, 2012.

⁶⁵ http://zqb.cyol.com/html/2011-03/11/nw.D110000zgqnb_20110311_2-11.htm, last visited on December 26, 2012.

⁶⁶ Dutra, Michael Sir, “How Much is That Ming Vase in the Window? Protecting Cultural Relics in the People’s Republic of China”, 5 *Asian-Pacific Law & Policy Journal* 62, 2004, p. 88.

Third, China's rapid economic growth in the past three decades has revived the Chinese domestic art market which further imperiled Chinese cultural property. Tomb raiders, poor farmers, and rural families with little money seek and illegally excavate countless cultural relics in hopes of earning a buck.⁶⁷

Fourth, China's rapid urbanization has destroys thousands of sites with cultural value and threatens many more.

Last, but not least, the international legal regime regulating the cross-border flow of cultural property remains weak, as both the the 1970 UNESCO Convention and the 1995 UNIDROIT Convention have fatal defects which have proven to be largely ineffective.

In this light, further efforts have to be made at two levels: on the one hand, China should improve its domestic legal regime at the national level; on the other hand, the international community should make joint efforts to reform international legal regime. The efforts made at these two levels are like two wings on which China can rise to those challenges.

As far as the national level is concerned, the Chinese government has realized the importance and necessity of improving its domestic legislation. In April 2012, the NPC conducted a national inspection on the implementation of the Cultural Objects Law. The inspection, the first of its kind, aims to supervise and support governments at all levels and related departments to improve work and strengthen management, and conduct studies on how to improve the law, according to a statement from the Standing Committee of NPC.⁶⁸ At the present stage, the Standing Committee of NPC is analyzing and evaluating the report of the inspection. According to the information provided by the SACH, senior officials of the Standing Committee of the NPC have reached consensus that Cultural Objects Law should be revised to adapt to the new circumstances as soon as possible. Pursuant to the suggestions put forward by the law professors and the officials and experts from the SACH, the revision in the near future should include, *inter alia*, the follows aspects:

First, the Cultural Objects Law should increase the economical penalties to effectively check the tendency of scarifying the safety of cultural relics for economic growth and urbanization.

Second, it should provide more specific definitions to replace the vague terms contained in the 2002 Law to improve its implementation. For exam-

⁶⁷ Taylor, Jason M., "The Rape and Return of China's Cultural Property: How can Bilateral Agreement Stem the Bleeding of China's Heritage in a Flawed System?", 3 *Loyola U. Chicago Int'l L.R.*, 2007, p. 233.

⁶⁸ http://english.gov.cn/2012-04/05/content_2107196.htm, last visited on December 30, 2012.

ple, as mentioned *supra*, the 2002 Law prohibits certain valuable grade-one cultural objects from exported from China; however, because of the broad subjective nature of the classification system, the ban on prohibiting the exportation of certain valuable cultural property is very difficult to enforce. Therefore, scholars and experts advocate that the future amendment should refine vague terms employed by the existing law.

Third, it should create incentives for returning discovered cultural objects to the States, and demarcated clearly the law enforcement departments' duties at various levels regarding cultural objects.

Last, but not least, as China has recently become an increasingly important art market, the future amendment should establish the restrictions on the import of illegally exported cultural objects as required by the conventions to which China is a party.

In terms of international level, the Chinese government suggests that the international community, the source nations in particular, should make concerted efforts to reform the international legal regime whose suggestions may be summarized as follows:

First, the 1970 UNESCO Convention should be improved and reformed. After 40 years' implementation, the defects of the Conventions have been fully revealed. Therefore, it is high time the international community made substantive amendment to this important, yet weak, Convention.

Second, more states, the market nations in particular, should be encouraged and urged to ratify the 1995 UNIDROIT Convention. While the 1995 Convention presents a marked improvement over the 1970 Convention, it has not been ratified by enough markets states to make it an effective means by which a source state, such as China, can reclaim illegal exported cultural property. As long as the major market nations refuse to ratify the Convention, there is little hope that its provisions will significantly stem the illicit traffic of cultural property.

Third, the international community should create more effective and comprehensive mechanisms to fight against illicit traffic of cultural property. To be more specific, China believes that the international community should integrate civil and administrative remedy with criminal justice to intensify the fight against illicit traffic of cultural property.

Last, but not least, when the time is right, the international community should considering enacting an international convention that covers the restitution of the cultural property looted or ravaged by force in history, which is the ultimate goal of source nations like China. Though its achievement may be extremely difficult, it represents the expectations of every Chinese people as well as most justice-pursuing people around the world.