

The Application of International Treaties in the Repatriation of Chinese Cultural Relics

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Abstract: The loss of Chinese cultural relics due to war plundering, colonial expropriation, and illegal trade has resulted in millions of artifacts being scattered across the globe. In response, China has actively engaged in cultural heritage protection through international treaties, including the *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, the *Convention Concerning the Protection of the World Cultural and Natural Heritage*, the *Convention on Stolen or Illegally Exported Cultural Objects*. However, the effectiveness of these treaties in repatriating lost artifacts remains limited due to temporal constraints (non-retroactivity), spatial fragmentation (asymmetry in treaty ratification), and judicial barriers (cross-border litigation challenges). The non-retroactivity principle prevents the restitution of relics lost before treaty adoption, while disparities in treaty participation among market and source countries hinder enforcement. Additionally, procedural obstacles in litigation, such as conflicts of laws and recognition of foreign judgments, further restrict legal avenues for restitution. To address these issues, this paper proposes enhancing treaty applicability, strengthening international enforcement mechanisms, and promoting a unified global legal framework to improve the effectiveness of cultural relic restitution under international law.

Keywords: cultural relic repatriation, international treaties, legal enforcement

1. Introduction

In today's era of global civilizational exchange, the international circulation of cultural property has transcended mere legal disputes, evolving into a global issue that concerns civilizational inheritance and international justice. For China, a nation with a rich cultural heritage, the loss of numerous treasures is deeply intertwined with historical traumas such as colonial invasions and cultural plunder. As a result, relic repatriation faces dual challenges: legal barriers and conflicts in value perception. While the international community has established a legal framework centered on the *Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and the *Convention on Stolen or Illegally Exported Cultural Objects*, inherent flaws remain, including temporal discontinuities, fragmented jurisdictional effectiveness, and limitations in judicial remedies.

Therefore, this study aims to comprehensively examine and assess the application of international treaties in China's relic repatriation, identify existing shortcomings, and propose targeted improvements to provide valuable insights for both research and practice. Beyond

addressing the limitations of existing conventions, it seeks to establish a “civilizational dialogue” approach to relic restitution, contributing to a more just cultural heritage governance framework.

2. Current Status of Chinese Cultural Relic Loss

According to statistics from the China Cultural Relics Society, over 10 million Chinese cultural relics have been lost overseas due to war plundering, illegal trade, and colonial expropriation [1]. Among them, more than one million national first- and second-grade cultural relics possess clear historical and chronological value. Additionally, data from UNESCO indicate that approximately 1.64 million Chinese cultural relics are housed in over 200 museums across 47 countries. Meanwhile, the number of Chinese cultural relics in private international collections is estimated to be nearly ten times the number held in museums, reaching approximately 20 million pieces. This vast quantity underscores the severe extent of China’s cultural relic loss and highlights the imbalance between the supply and demand of international restitution mechanisms.

As of September 2024, China has established intergovernmental cooperation frameworks with 27 countries—including Peru, Italy, Greece, Turkey and the United States—to prevent the theft, looting, and illegal export of cultural relics, signing bilateral agreements on cultural heritage protection. Through diplomatic negotiations, judicial cooperation, and multilateral mechanisms, China has successfully facilitated the return of 43 batches totaling over 1,900 lost cultural relics. However, compared to the overall volume, the current efficiency of repatriation remains insufficient, reflecting deeper structural contradictions within the existing legal and institutional framework.

3. Current International Treaty System and Evaluation

3.1. Evaluation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict

The *Convention for the Protection of Cultural Property in the Event of Armed Conflict* (hereinafter referred to as the *1954 Convention*) is the first international treaty specifically dedicated to the protection of cultural heritage during armed conflicts. It establishes the principle of “common heritage of humanity”, thereby challenging the traditional notion of absolute state sovereignty. The convention obligates contracting states to compile inventories of cultural property, train military personnel, and establish protective institutions during peacetime. In times of war, it mandates military exemption for cultural heritage listed in the *International Register of Cultural Property under Special Protection* and prohibits acts of retaliatory destruction and military use.

For instance, during the 2003 Iraq War, the National Museum of Baghdad was looted. In response, UNESCO repeatedly urged the U.S. and U.K. forces to comply with the convention and facilitated international cooperation to recover stolen artifacts. However, the convention lacks a robust enforcement mechanism, limiting its effectiveness. As a result, some archaeological sites continue to be used as military bases, leading to further damage.

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

In the mid-20th century, as the global economy recovered, the illicit trade in cultural relics intensified, leading to severe cultural heritage loss. To curb this phenomenon, UNESCO adopted the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (hereinafter referred to as the *1970 Convention*), which explicitly declares the illegal transfer of cultural property null and void and presumes that the transfer of cultural property during colonial occupation was unlawful.

The convention establishes a three-tier protection mechanism: the preventive mechanism requires contracting states to implement an export licensing system for cultural property; the restitution mechanism mandates that illegally exported cultural property be returned to its country of origin; and the international cooperation mechanism authorizes UNESCO to establish a Committee of Experts to assist in restitution claims. Furthermore, the convention provides dual avenues of redress, incorporating both judicial and diplomatic remedies. While the number of contracting states has increased to 143, the effectiveness of the convention remains constrained by variations in national legal systems, which complicate its implementation. To address these limitations, the international community subsequently developed the *1995 Convention*, aiming to provide a more comprehensive legal framework for the restitution of cultural property.

3.3. Evaluation of the Convention Concerning the Protection of the World Cultural and Natural Heritage

The Convention Concerning the Protection of the World Cultural and Natural Heritage (hereinafter referred to as the *1972 Convention*) is the first international treaty to grant cultural and natural heritage equal protection. Its core principle of "outstanding universal value" challenges traditional notions of state sovereignty by defining certain heritage sites as the "common wealth of all humankind" and imposing a transnational obligation of protection on contracting states. The convention establishes the *World Heritage List* system and promotes international cooperation through the creation of the World Heritage Fund and a technical assistance mechanism, facilitating the preservation of heritage sites beyond national boundaries.

3.4. Evaluation of the Convention on Stolen or Illegally Exported Cultural Objects

The Convention on Stolen or Illegally Exported Cultural Objects (hereinafter referred to as the *1995 Convention*), consisting of five chapters and 21 articles, applies to the restitution of both stolen and illegally exported cultural objects. It introduces the strict liability principle and the reversal of the burden of proof, significantly enhancing the protection of the cultural property rights of the state of origin. Under this framework, a restitution claim can be made without the need to prove that the purchaser "knew or ought to have known" of the illicit origin of the artifact. The convention also establishes a mechanism for the return of stolen cultural property, stipulating that a bona fide possessor is entitled to reasonable compensation, thereby balancing legal protection with market interests. In terms of enforcement, it provides legal avenues such as court rulings to facilitate restitution claims. A notable example is the case of the Zhanggong Patriarch Buddha, in which a mummified statue was illicitly removed from China and later found in the Netherlands. Although the Netherlands has not ratified the *1995 Convention*, its principles still hold potential influence in cultural relic repatriation disputes.

4. Institutional Deficiencies in the Application of International Treaties

4.1. Temporal Limitations: The Problem of Non-Retroactivity

A primary issue in the application of international treaties is temporal limitation, commonly referred to as the problem of non-retroactivity. Article 28 of the *Vienna Convention on the Law of Treaties* establishes the principle of non-retroactivity, restricting the application of treaties solely to illicit transactions occurring after their entry into force. For instance, Article 3(3) of the *1995 Convention* imposes a 50-year limitation period for restitution claims, effectively excluding Chinese cultural relics lost between 1840 and 1945 due to colonial aggression from legal redress.

4.2. Spatial Fragmentation: The Asymmetry of Treaty Participation

Another significant barrier is spatial fragmentation, wherein the asymmetry in treaty ratification among contracting states leads to regulatory inefficacy. According to Article 26 of the *Vienna Convention on the Law of Treaties*, a treaty binds only its contracting parties. This principle has resulted in an imbalanced legal framework for cultural relic protection. In the case of the *1970 Convention*, although it has 147 contracting states, fewer than 30% are major market states for cultural property. Notably, while the United States is a party, it has significantly narrowed its obligations through the *Convention on Cultural Property Implementation Act*. Similarly, the *1995 Convention* has only 56 contracting states, with key cultural relic importing countries such as Switzerland and France yet to ratify it, while major market states including the United Kingdom and Japan have persistently refused to join [2]. This structural imbalance has left countless Chinese cultural relics in the British Museum, including *The Admonitions Scroll* (女史箴图) and other war-looted artifacts, outside the jurisdiction of existing treaty frameworks.

4.3. Judicial Redress Ineffectiveness: Procedural Barriers in Cross-Border Litigation

Furthermore, judicial redress ineffectiveness represents a critical challenge, specifically the procedural barriers in transnational litigation. Cross-border cultural relic disputes are confronted with three primary procedural obstacles. First, there are restrictions on standing in litigation. According to the principle of Hague Conference on Private International Law, plaintiffs must demonstrate a direct legal interest in the case. For example, in the 2009 the Protection of Chinese Art in Europe v. Christie's France case, the plaintiff's inability to establish a property right over the bronze heads from the Old Summer Palace led to the dismissal of the lawsuit, and the Rat and Rabbit Heads were not successfully returned through judicial means. Second, there is the conflict of laws dilemma, where the country possessing the cultural property often applies the *Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)*, which leads to the erosion of the original state's cultural sovereignty claims. Third, recognition and enforcement of judgments remain problematic, as courts in the enforcing state may refuse to recognize or execute foreign judgments when they conflict with public policy. For instance, in 2016 The High People's Court of Hebei Province ruling on the rightful ownership of the Zhanggong Patriarch Statue was not recognized by the Dutch courts, highlighting the challenge of cross-border enforcement.

5. Solutions to the Dilemmas of International Treaty Application

5.1. Enhancing the Applicability of International Conventions

Within the framework of international law, enhancing the applicability of cultural relics restitution conventions is key to improving the success rate of recovery. First, the applicability of international conventions should be authorized by the constitution or fundamental laws of the state to ensure the legitimacy and authority of the treaty's application. The treaty could stipulate specific conditions for its application, offering a choice between direct adoption or transformation into domestic law depending on the case at hand. This approach would ensure that the treaty's effect is maximized without undermining national sovereignty or the integrity of the domestic legal system [3]. Additionally, supplementary provisions on the applicability of international conventions should be included, specifying whether the treaty applies directly or requires legislative action for indirect application. Clearer and more specific rules should be outlined regarding definitions of cultural

relics, restitution procedures, evidence standards, and other aspects, reducing ambiguity in interpretation. This would enhance the convenience and consistency of the treaty's application.

In response to the limitations imposed by the narrow scope of the treaty's binding effect, improving enforcement measures related to cultural relics restitution is particularly critical. One effective approach is optimizing cultural relic import standards. Establishing a more stringent review mechanism for cultural relic imports is a prerequisite for restitution, but excessive restrictions may hinder international cultural exchange. Therefore, a balance must be struck between protecting cultural relics and promoting cultural dialogue. This would involve combating illicit relic trafficking while still allowing for legitimate cultural exchanges.

Furthermore, enhancing international cooperation and coordination is essential. Efforts should be made to reach consensus on import control standards among states, creating a global regulatory network for cultural relics. This helps close loopholes in the fight against cultural relic trafficking and provides a stronger legal foundation and enforcement assurance for relic restitution efforts.

5.2. Strengthening Enforcement and International Legal Assistance

China should further strengthen cooperation with relevant countries and strive to establish bilateral or multilateral agreements to reach a consensus on jointly combating cultural relics smuggling. By signing bilateral or multilateral agreements, the rights and obligations of all parties can be clarified, providing a legal basis and operational platform for restitution efforts. These agreements should not only cover core elements such as the definition of cultural relics, restitution procedures, and evidence standards, but also include enforcement mechanisms and dispute resolution methods to ensure their practicality and binding force. For instance, China's cooperation with countries such as Egypt and Greece, which have been victims of cultural relics loss, not only garnered international sympathy for China's restitution efforts but also strengthened international support and collaboration [4]. This cooperation model helps to build global consensus and promote the return of lost cultural relics.

Additionally, strengthening coordination and communication with relevant international organizations is crucial, leveraging their advantages in international public opinion, information sharing, and technical support. The United Nations Educational, Scientific and Cultural Organization (UNESCO), as a key international body, plays an indispensable role in cultural relic restitution. When China is engaged in a cultural relic restitution dispute with another country, receiving support from UNESCO can significantly enhance the efficiency of diplomatic negotiations while avoiding contradictions between legal certainty and flexibility. Furthermore, the Interpol has played a key role in the global effort to recover stolen cultural relics and artworks. China should make full use of the resources and coordination functions of these international organizations to facilitate the return of lost cultural relics.

Moreover, in the final stage of judicial proceedings, international cooperation is essential for improving the international law enforcement cooperation mechanism and strengthening the enforcement of judgments. According to statistics, 30% of the cultural relics successfully recovered by China from abroad come from international judicial law enforcement cooperation. For example, in 2011 and 2015, the United States handed over 15 batches of 504 items (sets) of illegally smuggled cultural relics to China, based on bilateral agreements between the two countries. Due to the principle of non-interference in the sovereignty of states, although China has joined the *Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* and the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, in practice, China's compulsory judicial procedures for individuals or objects located abroad require the signing of special enforcement cooperation agreements for the

restitution of cultural relics. These agreements can specify the specific execution procedures, timelines, and responsible parties for the return of cultural relics.

5.3. Establishing a Unified International Legal Framework

As the original owner of numerous cultural relics, China should take a more proactive stance on the international stage, strengthening communication and collaboration with cultural relics market countries and international organizations. This is essential for promoting the restitution of overseas cultural relics. By actively participating in the formulation and revision processes of international conventions, China can push for the establishment of a fairer and more equitable cultural relic restitution mechanism [5]. This effort requires exploring new international consensus based on existing conventions, such as the *1970 Convention*, to amend provisions that are detrimental to the interests of the original countries of cultural relics. Furthermore, China should advocate for the creation of new international treaties to better adapt to the current situation of transnational cultural relic flows. Establishing a unified international legal framework would provide more coherent and effective governance in the restitution process, ensuring that the interests of cultural heritage are protected globally, while balancing the rights of market countries and the moral obligations towards cultural relics' original countries.

6. Conclusion

With globalization and the growing emphasis on cultural diversity, the protection and restitution of cultural property has become a global concern. China has made notable progress in this area, yet many relics remain overseas, awaiting return. To advance this effort, we must strengthen international cooperation, foster dialogue, and establish multi-layered platforms for collaboration. Hosting international seminars and forums can enhance trust, share experiences, and combat cultural property crimes. These will help facilitate the return of more relics and contribute to a fairer, more open cultural heritage system that honors history while embracing the future.

Funding Support

Project 202510004161 supported by National Training Program of Innovation and Entrepreneurship for Undergraduates

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