

# DEBUTS

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## Healing the Past: Recovery of Chinese Cultural Objects Lost During the Colonial Era

**Abstract:** This article focuses on the colonial context of China, which led to a monumental loss of Chinese cultural objects by three means: looting and plundering; cultural expeditions; and illicit trafficking. The loss of cultural objects caused severe deprivation to the country of origin (i.e. China) from the perspective of culture, and active decolonization could help heal the wounds and rebuild the cultural independency of China. In order to recover cultural objects removed during the colonial era, at the present time countries of origin are faced with difficulties at two levels. In terms of provenance research, the history and ownership trajectory of the cultural objects is difficult to establish in light of the fact that significant time has elapsed. In terms of legal claims, evidence needs to be collected in order to prove the original ownership, while at the same time issues of private law create obstacles to claims. Moreover, current international conventions fail to provide a legally-binding obligation on the part of current possessors to return objects lost due to colonialism.

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This article proposes mutual respect for cultural sovereignty as a way to make up for the absence of cultural sovereignty during past colonizations.

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**Keywords:** cultural objects, decolonization, cultural sovereignty, China

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## Introduction

Cultural objects, as the carriers of a civilization, not only illustrate the story of the past, but also make it possible to inherit the intelligence of our ancestors. Unfortunately, the late modern period of humankind has witnessed the damage and destruction of cultural heritage and the looting and smuggling of cultural objects through war or colonial occupation, which as a result has deprived local people of access to their indispensable cultural identity.

While the illicit trafficking of cultural property remains a challenge to the protection of cultural heritage even under the relatively well-functioning basic international instruments, such as the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“the 1970 UNESCO Convention”),<sup>1</sup> cultural objects taken in colonial contexts deserve special attention. Discussion of this issue is a growing topic with respect to the accessing and due diligence policies of museums and collectors.<sup>2</sup> One of the reasons is that these cultural objects tell the stories of the historical plundering and looting, which can end up being hidden or even deformed when the objects are separated from the cultural identity of the countries of origin. In other words, restitution and repatriation represent not only respect for the political independence of a country, but also for its civilization and culture.<sup>3</sup> Another reason that requires attention vis-à-vis cultural objects from colonial contexts is that since it has often been more than 100 years since the looting and illegal takings

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<sup>1</sup> 14 November 1970, 823 UNTS 231.

<sup>2</sup> Western museums have been working on the repatriation of their collections from the colonial era. See, e.g., C. Hickley, *Austria Takes First Step to Return Artefacts from Colonial Era*, “The Art Newspaper”, 7 January 2022, <https://www.theartnewspaper.com/2022/01/07/austria-makes-first-step-to-returning-artefacts-from-colonial-era> [accessed: 27.09.2022]; *Germany Signs Deal to Give Ownership of Benin Bronzes to Nigeria*, “Reuters”, 25 August 2022, <https://www.reuters.com/world/europe/germany-signs-deal-give-ownership-benin-bronzes-nigeria-2022-08-25/> [accessed: 27.09.2022].

<sup>3</sup> As Ana F. Vrdoljak observed, independence movements were often accompanied by claims for the restitution of cultural objects held in imperial collections in order to reconstitute and revitalize an autonomous collective cultural identity. A.F. Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, in: L.V. Prott (ed.), *Witnesses to History: A Compendium of Documents and Writings on the Return of Cultural Objects*, UNESCO, Paris 2009, p. 194.

took place, problems arise at the levels of providing factual evidence and a legal basis to support the claim for the restitution by the country of origin. Together with the vagueness and non-retroactivity of the international conventions, which will be further discussed in this article, it is thus more difficult to recover lost cultural objects taken in colonial contexts and heal the wounds inflicted by the loss of a cultural identity than would be the case for items taken during the contemporary period.

As China was one of the countries that experienced colonialism and a significant loss of cultural objects because of it, this article aims to provide an overview of Chinese cultural objects lost over the period between 1840 and 1949, analysing the character of the losses and the dilemmas involved when making claims for their return.<sup>4</sup> At the same time, the article will discuss the importance of the notion of cultural sovereignty – both its collapse and rebuilding – through the stories of loss and recovery. Thus the article will first review the main ways of losing cultural objects during the above-mentioned period in China. Next, the dilemmas and obstacles to restitution will then be discussed by focussing, first, on the dilemmas relating to provenance research; and second on the legal issues arising in both national and international dimensions. The conclusion of this article proposes a discussion on how to mend the cultural wounds caused by past looting by respecting the cultural sovereignty of a country.

## The History of Chinese Lost Cultural Objects from Colonial Contexts

The modern Chinese history started with a series of occupation wars beginning in the 1840s, which resulted in the destruction, plundering, and looting of cultural objects from both collections of the emperor palaces as well as those possessed by local people. Beyond the conflict zones and the colonies in China, there were also unauthorized excavations and stealing during the colonial occupations. According to the statistics compiled by UNESCO, more than 1,600,000 cultural objects looted from China are now dispersed among 200 museums in 47 countries around the world.<sup>5</sup> In addition, millions of cultural objects are held in private possession,<sup>6</sup>

<sup>4</sup> The Chinese cultural objects lost between 1840 and 1949 are those looted, stolen, clandestinely excavated, or illegally trafficked directly or indirectly from the colonial context in China. For the purpose of this article, the term “cultural objects from colonial contexts” will be used to describe such kinds of cultural objects. It should be noted that “cultural relics” are also frequently used under the context of Chinese law. As noted by Zhengxin Huo, strictly speaking these terms do not all mean the same thing. However, it is beyond the scope of the article to provide a theoretical discussion in this regard, and the terms will be used more or less interchangeably in this article. Z. Huo, *Legal Protection of Cultural Heritage in China: A Challenge to Keep History Alive*, “International Journal of Cultural Policy” 2016, Vol. 22(4), note 1.

<sup>5</sup> UNESCO, *The Fight against the Illicit Trafficking of Cultural Objects. The 1970 Convention: Past and Future. Information Kit*, 2013, [https://unesdoc.unesco.org/ark:/48223/pf0000227215\\_eng](https://unesdoc.unesco.org/ark:/48223/pf0000227215_eng) [accessed: 27.09.2022].

<sup>6</sup> L. Ji, *The Two Zodiacs: Possible Methods for Returning Lost Relics to China*, “Art Antiquity and Law” 2009, Vol. 14, p. 168.

making their current location and the circumstances under which they were acquired more difficult to trace and determine. In general, cultural objects went lost from China during this period in three ways: looting and plunder; cultural expeditions; and illicit trade. The term “cultural objects from the colonial contexts” in this article refers to those lost mainly in these three ways.

## Looting and plunder

The Opium Wars from the 1840s are usually designated as the starting point of Chinese modern history, serving as the dividing line between when China went from being a feudal dynasty to becoming a semi-feudal and semi-colonial State, according to the modern Chinese history studies.<sup>7</sup> Under this categorization, cultural objects destroyed, looted, or smuggled during the wars are of a colonial context. One of the most extreme examples of the imperialist aggression was the looting and destruction of the Old Summer Palace during the Second Opium War (1856-1860), initiated by the Anglo-French allied troops. The Old Summer Palace was a royal garden of the imperial family in the Qing Dynasty, and if it survived intact to this day it would undoubtedly be one of the greatest and richest museums in the world.<sup>8</sup> The military forces broke into the garden and destroyed, looted, and robbed all valuable objects before a fire burnt the whole site to ground. These objects are deemed to be cultural objects at least because of the lapse of time. Many of their “trophyies”, such as bronzes, porcelains, calligraphies, and silks were sold or auctioned directly around the military camps in Beijing, some of which were eventually transferred to the private markets.<sup>9</sup> Beyond the direct looting of the Old Summer Palace, architectural fragments and other remaining precious objects also fell into private collections after the fire.

Among the looting of the Old Summer Palace, the 12 bronze zodiac animal heads are the most familiar to the Chinese public. The appearance of these less valuable zodiac heads – in terms of their materials and ages – is nevertheless more able to trigger the national sentiment of the Chinese people because of their history.<sup>10</sup> In 2009, when Christie’s was about to auction the Rat Head and the Rab-

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<sup>7</sup> According to Alison Adcock Kaufman, it is referenced as the “Century of Humiliation”, the period from the beginning of the first Opium War in 1839 to the triumph of the Chinese Communist Party (CCP) in the Chinese civil war in 1949. See A.A. Kaufman, *The “Century of Humiliation,” Then and Now: Chinese Perceptions of the International Order*, “Pacific Focus” 2010, Vol. 25(1), p. 2.

<sup>8</sup> Y.-T. Wong, *A Paradise Lost: The Imperial Garden Yuanming Yuan*, University of Hawaii Press, Honolulu 2001, p. 6.

<sup>9</sup> Z. Zhang (ed.), *A Memorandum of A Century's Loss of Cultural Relics in China*, China Tourism Publishing House, Beijing 2001 (in Chinese), pp. 14-19. For English observations, see L. Tythacott (ed.), *Collecting and Displaying China's “Summer Palace” in the West: The Yuanmingyuan in Britain and France*, Routledge, New York 2018; Z. Liu, *The Case for Repatriating China's Cultural Objects*, Springer, Singapore 2016, pp. 8-10.

<sup>10</sup> C. Bowlby, *The Palace of Shame that Makes China Angry*, BBC, 2 February 2015, <https://www.bbc.com/news/magazine-30810596> [accessed: 30.01.2022].

bit Head in Paris, the National Cultural Heritage Administration of China (NCHA) declared its objection and condemned the auction, claiming infringement of the “cultural interest and national sentiment” of the Chinese people and requesting the withdrawal of the lots from auction.<sup>11</sup> Since the auction proceeded, the NCHA enhanced its censorship over the import and export of Chinese cultural objects as a sanction for conducting the auction.<sup>12</sup>

The Boxer War at the beginning of the 20th century was another major event that resulted in an even wider scale of looting and illicit trade, not only of the imperial collections but also private ones. Besides the alliance of eight nations which sent troops to destroy and loot the entire city of Beijing, art traders from all around the world were attracted to and engaged in the trade of art objects, ending in another catastrophe for innumerable Chinese cultural objects.<sup>13</sup>

## Cultural expeditions

The late modern period also witnessed the unlawful excavation and trafficking of Chinese cultural objects, especially in North Western China. The clandestine excavation and destruction carried out by foreign archaeologists or adventurers were usually obscured under the terms “cultural expeditions” or “eastern explorations”.

Beginning in the late 19th century, the industrial revolution and the emergence of the world market accelerated the colonization of China, which brought about a new trend in the exploration in Central and Eastern Asia with regard to its art and religion. In this context, expedition missions were assigned and sent by the colonial powers into North Western China; investigating, excavating, collecting, and destroying numerous heritage sites and cultural remains. Statistics show that between 1876 and 1928, more than 40 foreign expeditions or archaeological missions took place in the region.<sup>14</sup> Cultural objects, such as frescos, Buddhist statues, and scriptures from cave temples, such as the Dunhuang Grottoes and Kizil Grottoes, suffered the most severe damage and loss. For example, beginning in 1907 the British Hungarian Marc Aurel Stein conducted three archaeological expeditions along the ancient Silk Road in China on behalf of the British Museum and the British Government of India. At Dunhuang Mogao Grottoes, he acquired “some 7,000 complete manuscripts, 6,000 fragments and several cases of paint-

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<sup>11</sup> Statement by the National Cultural Heritage Administration on the auction of the bronze statue of the Yuanmingyuan by Christie's (in Chinese), 26 February 2009, [http://www.gov.cn/gzdt/2009-02/26/content\\_1243445.htm](http://www.gov.cn/gzdt/2009-02/26/content_1243445.htm) [accessed: 30.01.2022].

<sup>12</sup> Notice on reviewing matters related to cultural relics declared by Christie's Auction House for entry and exit (in Chinese), 26 February 2009, [http://www.ncha.gov.cn/art/2009/2/26/art\\_2318\\_43552.html](http://www.ncha.gov.cn/art/2009/2/26/art_2318_43552.html) [accessed: 30.01.2022].

<sup>13</sup> Z. Zhang, *op. cit.*, pp. 45-46.

<sup>14</sup> J. Lu, *A Memorandum of Tragedies of Cultural Relics*, Sichuan People's Publishing House, Chengdu 2002 (in Chinese), p. 52.

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ings, embroideries and other artifacts”.<sup>15</sup> In addition, archaeologists and explorers from Sweden, Britain, France, Germany, and Japan also acquired a large number of cultural objects from China by “purchase under coercion”, theft, or smuggling, resulting in another wave of Chinese losses of its cultural objects overseas during this period.<sup>16</sup>

It is worth noting that the cultural expeditions in the central Asian and African countries share some common intentions,<sup>17</sup> while the causes for the flourishing of cultural expeditions can be seen from different contexts. On the one hand, since the 19th century there was an increasing interest and demand for oriental arts, leading to a considerable tide of commercial archaeology in the Far East.<sup>18</sup> Accordingly, the cultural expeditions were also used as tools by the colonial powers to both collect knowledge as well as establish separate spheres of influence.<sup>19</sup> In addition, cultural expeditions were seen as a way to embrace the independent eastern culture into the western civilization, while at the same time providing evidence of the influence of the western world on the formation of eastern culture.<sup>20</sup> At the same time, during the time of wars and colonization China was neither politically nor economically independent, as people were lacking not only in terms of means of living, but also in their awareness that such objects constituted an important cultural heritage of the country. This also explains why so many cultural objects made their way into the possession of the colonial powers and individual expeditioners in return for living products and diplomatic benefits.<sup>21</sup> In other words, what were cultural expeditions in appearance were in fact colonial expropriations by their very nature.

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<sup>15</sup> J. Cuno, *Who Owns Antiquity? Museums and the Battle over Our Ancient Heritage*, Princeton University Press, Princeton, NJ 2011, pp. 88-89.

<sup>16</sup> Other foreign adventurers and explorers include, but are not limited to, Sven Hedin (Sweden), Paul Pelliot (France), Albert Grünwedel (Germany), Albert von Le Coq (Germany), the Ōtani expeditions (Japan), and Langdon Warner (the USA). Historical introductions can be found in the following texts: Y. Liu, *Discovery of the Library Cave in Dunhuang Mogao Caves and Running of the Historical Cultural Relics*, “Dunhuang Research” 2000, Vol. 64(2) (in Chinese); L. Zhao, *A Review of the History of the Loss of Murals from the Kizil Caves and a Survey of the Current Situation*, “Xinjiang Art” 2018, Vol. 4 (in Chinese); J. Cuno, op. cit.; K.E. Meyer, S.B. Brysac, *The China Collectors: America’s Century-Long Hunt for Asian Art Treasures*, St. Martin’s Press, New York 2015.

<sup>17</sup> For more on cultural expeditions in Africa, see D.N. Osman, *Occupier’s Title to Cultural Property: Nineteenth-Century Removal of Egyptian Artifacts*, “Columbia Journal of Transnational Law” 1999, Vol. 37.

<sup>18</sup> See L.V. Prott, *Problems of Private International Law for the Protection of the Cultural Heritage*, “Collected Courses of the Hague Academy of International Law” 1989, Vol. 217, p. 229.

<sup>19</sup> Z. Zhang, op. cit., p. 61.

<sup>20</sup> J.M. Jacobs, *The Compensations of Plunder: How China Lost Its Treasures*, The University of Chicago Press, Chicago 2020, p. 286.

<sup>21</sup> See ibidem; D.M. Reid, *Whose Pharaohs? Archaeology, Museums, and Egyptian National Identity from Napoleon to World War I*, University of California Press, Berkeley 2002, p. 54.

## Illicit trade

The strong temptations/incentives of benefits to the art market, which highlighted eastern arts around the 1920s, led some art dealers and curators from China and overseas to also participate in the smuggling of cultural objects from China, among which the dealers and curators from Japan played an important role.

Even not including the pillage of cultural objects by the Japanese troops through wars, the time period was marked by a great loss of cultural objects clandestinely excavated, stolen, and illegally exported by Japanese businessmen. The Yamanaka Chamber of Commerce, a Japanese dealer of antiquities, even established a monopoly in the trade between China and America, becoming one of the largest antiquities dealers in the world before the Second World War.<sup>22</sup> For example, from 1918 to 1926 the Yamanaka Chamber of Commerce carried out the largest robbery of the Tianlongshan Grottoes and cave temples in the North-Western Shanxi Province of China, cutting down or destroying nearly all the figures of Buddhas and bodhisattvas, hands, and relief carvings of all the caves. The sculptures were then shipped to Japan and sold to museums or private collections in Japan, Europe, and North America at a considerable price.<sup>23</sup>

An industrialized smuggling chain was set up between the Chinese heritage sites and the western market. Through their representation and purchase contracts, private collectors managed – without coming to China in person – to designate the cultural objects they desired and acquire them with the assistance of their agents in China, who helped to remove the objects, pack them, and ship them over the border while evading the regulation of customs authorities.<sup>24</sup> Finally, the growth of colonial powers and the interest in the Asian art market triggered even more looting, theft, and illegal export of cultural objects from China, making it a critical period in which China lost innumerable cultural objects around the world.

## The Provenance Research Dilemma

In order to curb the chain of unlawful movement of illegal cultural property, domestic and international regulations increasingly require provenance research be-

<sup>22</sup> Futiansheng, *The Circulation and Appreciation of Chinese Art in Modern Japan*, transl. by X. Zhao, Shanghai Calligraphy and Painting Publishing House, Shanghai 2014 (in Chinese), p. 86.

<sup>23</sup> D. Sun (ed.), *Tianlongshan Grottoes: Study on the Stone Statues Lost Overseas*, Foreign Language Press, Beijing 2014 (in Chinese), p. 1; Z. Ying, *Stolen Buddha Statue Comes Home to China*, "SHINE News", 6 August 2022, <https://www.shine.cn/feature/art-culture/2108063210/> [accessed: 08.02.2022].

<sup>24</sup> Z. Huo, *The Restitution of Chinese Cultural Objects Lost Overseas*, China University of Political Science and Law Press, Beijing 2013 (in Chinese), p. 243; K.E. Meyer, S.B. Brysac, op. cit., p. 98; Z. Huo, R. Chen, *Jurisprudential Thinking on Cultural Property Recovery from the Perspective of Cultural Sovereignty: Based on China's Lost Cultural Property from Cave Temples*, "Academic Monthly" 2022, Vol. 1 (in Chinese).

fore museums or private purchasers can acquire a cultural object.<sup>25</sup> The obligation to provide an object with documentation of its acquisition history has resulted in a proliferation of “certificates” that should – in theory – dissipate any doubts about theft or looting.<sup>26</sup> The burden of provenance research now extends beyond the dimension of the art trade. It has also become a significant task on the part of museums which are seeking to make up for the colonial history and declassify their collections from colonial contexts. Research on the history of their collections is significant because it provides a basis for dialogue between the source country and the holding country during the process of repatriation. However, when a claimant fails to prove that the objects originated from its territory or were removed without authorization, the repatriation process may be obstructed. Similar to the long-term debate concerning the ownership of the Parthenon Marbles between the Greek Government and the British Museum over whether the objects were acquired in good faith,<sup>27</sup> the Chinese cultural objects lost during the colonial era may also be faced with the dilemma of provenance research when a claim for return is initiated, even though it is usually the undertaking of the current possessors when acquiring the object(s).

## Current status of provenance research of cultural objects from colonial contexts

In recent years, the long-term process of decolonization among major western museums by returning their collections to their countries of origins has shown much progress, especially in dealings with colonial-era objects from African countries.<sup>28</sup> In this case, the museums are increasingly under pressure to not only make sure that any new accession has a legal history of transfers, but also to initiate projects dealing with their current collections and review their legal bases in a more comprehensive fashion.

For example, according to the ICOM Code of Ethics for Museums, provenance research prior to the acquisition of cultural objects is an undertaking on the part of the museums, with the Code providing that:

[E]very effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained

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<sup>25</sup> E. Campfens, *Whose Cultural Objects? Introducing Heritage Title for Cross-Border Cultural Property Claims*, “Netherlands International Law Review” 2000, Vol. 67.

<sup>26</sup> B. Hauser-Schäublin, L.V. Prött (eds.), *Cultural Property and Contested Ownership: The Trafficking of Artefacts and the Quest for Restitution*, Routledge, London 2016, p. 8.

<sup>27</sup> K. Ampela, *The Parthenon Marbles and Greek Cultural Heritage Law*, 6 January 2022, <https://www.culturalheritagelaw.org/The-Parthenon-Marbles-and-Greek-Cultural-Heritage-Law> [accessed: 08.02.2022].

<sup>28</sup> See, e.g., M. Pasikowska-Schnass, *Colonial-Era Cultural Heritage in European Museums*, European Parliamentary Research Service (PE 696.188), September 2021.



in, or exported from its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item since discovery or production.<sup>29</sup>

However, the duty of provenance research on current collections refers to a further dimension and action on the part of museums, i.e. to cooperate in the return of cultural objects back to their countries of origin. This can be concluded by once again referring to the ICOM Code of Ethics concerning the return of cultural objects, which provides that "museums should be prepared to initiate dialogue for the return of cultural property to a country or people of origin".<sup>30</sup> Accordingly, provenance research on current collections requires cooperation between museums and the source countries, with the return of those collections without legal provenances as a result of the cooperation.

When an object of questionable provenance is placed on the market today, the due diligence requirement is also part of the duties of art dealers, as provided by the International Code of Ethics for Dealers in Cultural Property<sup>31</sup> and other moral principles or legal instruments applied to dealers. The possessor or *bona fide* purchaser must also undertake the responsibility of proving their due diligence when making claims for compensation. In other words, they need to ensure and demonstrate their good faith by conducting a sufficient investigation into the ownership trajectory of the objects.<sup>32</sup>

It is worth noting that some countries and museums have begun to implement their policies of decolonization by conducting provenance research on their current collections in collaboration with the source countries.<sup>33</sup> However, some museums which received donations from a given colony in past history may be faced with a problem in their provenance research, since the time of colonial plundering and collecting was claimed to be a time of turning an "imperial blind-eye to opportunistic collecting" in some empires.<sup>34</sup> The soldiers and explorers who brought

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<sup>29</sup> ICOM, *Code of Ethics for Museums*, 2017, 2.3, <https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf> [accessed: 27.09.2022]. While this provision of due diligence is codified under the section of "acquiring collections", it is also significant to museums for the investigation of their current collections which were acquired during the colonial era.

<sup>30</sup> *Ibidem*, 6.2.

<sup>31</sup> UNESCO, *International Code of Ethics for Dealers in Cultural Property*, 1999, UN Doc. CLT/CH/INS-06/25 rev.

<sup>32</sup> See, for example, Article 4 of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 34 ILM 1322.

<sup>33</sup> See, for example, the joint project "Traces of the 'Boxer War' in German Museum Collections", established by seven German museums to examine their holdings for looted goods from the Boxer War and to jointly research their provenance histories, <https://www.smb.museum/en/museums-institutions/museum-fuer-asiatische-kunst/collection-research/research/traces-of-the-boxer-war/> [accessed: 08.02.2022].

<sup>34</sup> J. van Beurden, *Treasures in Trusted Hands: Negotiating the Future of Colonial Cultural Objects*, Sidestone Press, Leiden 2017, p. 67.

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the items back to their home countries to be stored in the museums as designated by their governments, or their descendants who donated or sold the objects to the museums, neglected to explain how they acquired or inherited the objects and the receiving institutions or museums implicitly waived their duty of conducting provenance research when acquiring these objects.<sup>35</sup> Due to the lapse of time and weaker documentation, comprehensive provenance research into the collections from colonial contexts can thus be very difficult.

The other side of the coin of provenance research regarding cultural objects from colonial contexts lies in the assignment of the burden of proof to produce evidence on the requesting country, which usually needs to provide convincing evidence that the object originated within the borders of its territory. In the case *Italy v. J. Paul Getty Museum*, a bronze statue named the *Victorious Youth* was discovered under the water off the coast of Italy by Italian fishermen and was brought into the territory of Italy in 1964. The statue was then transferred through various holders around many countries before being acquired by the Getty Museum.<sup>36</sup> Among the debate between the Italian Government and the museum, the origin of the item was an important factor in deciding whether the Italian Government was once the legal owner of the statue, because it was attributed to the great Greek sculptor Lisippo di Sicione, who lived during the classical era.<sup>37</sup> In addition to its claims that it had fulfilled the requirements of due diligence, the museum's defence was that the statue was made in Greece and was carried into the Italian sea very incidentally and for a short period of time, which it argued was insufficient to prove that Italy retained ownership from the beginning.<sup>38</sup> However, the Court of Cassation of Italy held in its 2018 judgment that the statue could also be deemed to originate in Italy, emphasizing the links and "cultural continuity" between the Romans and Greeks, as these civilizations influenced each other when the statue was created.<sup>39</sup>

The same question of provenance also occurred in the case of *Government of Peru v. Johnson*, where the plaintiff failed to prove that the subject items were taken or excavated from archaeological sites in Peru. The provenance of the items was vague because the Peruvian Pre-Columbian culture spanned not only modern-day

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<sup>35</sup> Ibidem, pp. 42-43.

<sup>36</sup> A. Chechi, R. Contel, M.-A. Renold, *Victorious Youth - Italy v. J. Paul Getty Museum*, "Platform ArThemis", May 2019, <https://plone.unige.ch/art-adr/cases-affaires/victorious-youth-2013-italy-v-j-paul-getty-museum> [accessed: 27.09.2022].

<sup>37</sup> See C.C. Mattusch, *The Victorious Youth*, Getty Museum Studies on Art, Los Angeles 1997.

<sup>38</sup> M. Durón, "We Will Continue to Defend Our Legal Right to the Statue": Getty Trust Responds to Italian Court Calling for Return of "Victorious Youth" Bronze, "ARTnews", 4 December 2018, <https://www.artnews.com/art-news/news/will-continue-defend-legal-right-statue-getty-trust-responds-italian-court-ruling-calling-return-victorious-youth-bronze-11460/> [accessed: 09.02.2022].

<sup>39</sup> Court of Cassation (Italy), *Italy v. J. Paul Getty Museum*, Judgment No. 22 of 2 January 2019, pp. 39-41.

Peru, but also areas that now are within the borders of Bolivia and Ecuador.<sup>40</sup> Viewed in this light, the dilemmas associated with provenance research were not only on the current possessors, but also on the countries of origin when making a request for return.

## Problems of provenance research concerning Chinese cultural objects from colonial contexts: case studies

As discussed above, the burden of evidentiary proof with respect to provenance research can be either on the purchaser or the claimant(s). The former depends on the willingness and due diligence of the purchaser,<sup>41</sup> while the latter may contain traps which lead claimants into trouble. If the country of origin (claiming as the previous owner) of the cultural object fails to prove that the object was located within its borders, or that the object was excavated from the heritage sites or monuments of the country, it would be difficult for such country to claim ownership of the object.<sup>42</sup> For those objects looted, clandestinely excavated, stolen, or illegally exported under the context of colonialism, the problems associated with provenance research are becoming more difficult to tackle as time goes by. Two typical cases concerning the provenance research of lost cultural objects from colonial contexts may help to illustrate this situation.

### Cultural objects from the Old Summer Palace

While the invasion and plunder carried out by the colonial powers in the Old Summer Palace has been at the centre of discussions concerning the Chinese lost cultural objects from colonial contexts,<sup>43</sup> at the same time a number of looted cultural objects from the Old Summer Palace remain in private hands and their trajectory can only be traced when they are put on the open market, their resale being considered as a second humiliation to the Chinese people. This to some extent explains why the Chinese Government and the civil society have been making efforts to recover these looted objects in recent decades.<sup>44</sup>

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<sup>40</sup> *Government of Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989), 813.

<sup>41</sup> See Z. Liu, *op. cit.*, pp. 48-49.

<sup>42</sup> See A. Chechi, *The Settlement of International Cultural Heritage Disputes*, Oxford University Press, Oxford 2014, p. 69; E. Jayme, *Narrative Norms in Private International Law: The Example of Art Law*, "Collected Courses of the Hague Academy of International Law" 2015, Vol. 375.

<sup>43</sup> It is regarded as a "national humiliation" by Chinese people because the plunder not only represented the destruction and taking of the emperors' possessions, but also did a tremendous damage to the cultural identity of Chinese people. See P. Cohen, *Remembering and Forgetting National Humiliation in Twentieth Century China*, "Twentieth Century China" 2002, Vol. 27(2), quoted in J.L. Hevia, *The Afterlives of a Ruin: The Yuanmingyuan in China and the West*, in: L. Tythacott (ed.), *op. cit.*, p. 25.

<sup>44</sup> The necessity of restitution is usually to regain lost cultural property that is truly significant to the cultural heritage of a nation. See Y. Zhang, *The Right to Restitution of Cultural Property Removed as Spoils of War*

The specific provenance of some Chinese objects in the western museums and open markets remains vague, or even false, because it is used as a convenient and secure basis for labelling the objects from 19th century China in the market as being “from the Imperial Summer Palace, Peking”<sup>45</sup> – a labelling which significantly contributes to the final price of the objects. Furthermore, as discussed previously the objects from the Old Summer Palace not only entered into the collections of museums, but also into private collections, which has increased the tenuousness of provenance research. While the Chinese Government has successfully recovered some of its important cultural objects from both western museums and the art markets through donations or purchases,<sup>46</sup> litigation is rarely involved in making claims for the return of the cultural objects from the Old Summer Palace,<sup>47</sup> and it remains uncertain whether, and to what extent, there are legal obstacles surrounding the burden of proof when such cases arise in a substantive legal procedure.

## Cultural objects from the cave temples

Attention should also be drawn to the loss of cultural objects from Chinese cave temples – for example the Mogao Grottoes and the Tianlongshan Grottoes during the first half of the 20th century, which represent a different path of losing cultural objects. The objects from the cave temples are the products of the construction of the old Silk Road and the result of the interaction and commercial transactions between different cultures along the Silk Road.<sup>48</sup> In this case, the cultural objects – which were created in the early ages – retain some typical features of those from the cave temples of other countries, especially of the religious art of India and the Central Asia.<sup>49</sup>

It is usually argued that referring solely to the cultural link between the objects and the claimants cannot sufficiently prove that an object originated from a specific territory.<sup>50</sup> Insofar as regards the cultural objects from cave temples or other heritage sites in North Western China, their provenance is under challenge

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*During Nineteenth Century International Warfare*, “University of Pennsylvania Journal of International Law” 2021, Vol. 42(4), p. 1154.

<sup>45</sup> N. Pearce, *From the Summer Palace 1860: Provenance and Politics*, in: L. Tythacott (ed.), op. cit., p. 46.

<sup>46</sup> See M. Yu, *Approaches to the Recovery of Chinese Cultural Objects Lost Overseas: A Case Study from 1949 to 2016*, “International Journal of Cultural Policy” 2018, Vol. 24(6).

<sup>47</sup> In 2009, a civil society brought a lawsuit against Christie’s for its withdrawal from auction of the two zodiac heads, the rabbit and the rat, but the litigation was dismissed for the society’s lack of legal standing to sue. See Z. Huo, *The Restitution...*, p. 79.

<sup>48</sup> See S. Zhao, *A Brief of the Art of the Dunhuang Grottoes*, China Youth Publishing Group, Beijing 2019 (in Chinese), p. 1.

<sup>49</sup> See S.E. Lee, *A History of Far Eastern Art*, Prentice-Hall, Englewood Cliffs, NJ 1964, p. 132.

<sup>50</sup> See J. Church, *Evolving U.S. Case Law on Cultural Property Disputes*, “International Journal of Cultural Property” 1993, Vol. 2.

by some western collectors or curators, who claim that the objects may not have existed within the borders of old China when they were created.<sup>51</sup> Viewed in this light, more detailed evidence is required when making a request to return objects that were stolen or smuggled under the guise of cultural expeditions. In other words, even if an object is proved to have been taken in an unlawful way, it is still a challenge to prove that China is the only qualified claimant in cases of their repatriation.

## Legal Dilemmas

Whether there exists a legal basis for claiming the return and restitution of cultural objects taken in colonial contexts to their countries of origin is another outstanding issue that needs to be resolved. The reasons are twofold: Firstly, from the perspective of domestic law the legislation for the protection of cultural property and the ownership was rarely well-formulated during the colonial era, i.e. before the independence of the source country and the formation of the concept of modern cultural heritage law.<sup>52</sup> Thus a careful and insight review of the cultural heritage law in force during the time when the objects were taken is of significance when formulating the legal basis for their return to claimants.<sup>53</sup> When such objects were transferred into the marketplace and obtained by a purchaser, the rules of *bona fide* acquisition and statutes of limitation may also present obstacles to claimants. Secondly, most of international conventions tackling the illicit traffic of cultural property were adopted after the Second World War, and it is difficult – even impossible in some cases – to adjust them to the theft and movement of cultural properties during colonial times. This section discusses the legal framework of China with regard to the cultural objects taken or lost in the colonial contexts, and the private law issues as well as the relevant international instruments for their restitution.

## National legal frameworks

Given the growing strength of the importance of cultural heritage protection, there is an increasing willingness on the part of the holding countries to assist in establishing the extraterritoriality of the cultural heritage law of the countries

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<sup>51</sup> See J. Cuno, *op. cit.*, pp. 91-92, 107-108.

<sup>52</sup> Justin M. Jacobs initiated a discussion on whether the cultural identity of Chinese People and the modern cultural property law in China during the looting era had yet emerged. See J.M. Jacobs, *op. cit.*, p. 286.

<sup>53</sup> As discussed in the case *Government of Peru v. Johnson*, except for the lack of sufficient evidence showing that the items were discovered within the territory of Peru, the Peruvian laws at that time did not imply state ownership of the cultural property. The court rejected the application of the Peruvian Government based on its conclusion that the extent of Peru's claim of ownership as part of its domestic law was uncertain. See *Government of Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989), 814-815.

of origin.<sup>54</sup> Inasmuch as legal ownership is a prerequisite for the country of origin to make a claim for the return of cultural objects lost overseas, it inevitably becomes the key battleground between the claimant and the current possessor. The “battle” could be more complicated when adjustment tools are in force in private law to ensure stable possession and transactional security.

## Laws on the protection of cultural objects from the colonial contexts

It is believed that the earliest recorded rules of Chinese law concerning the penalty for theft of treasures are traceable to the Zhou Dynasty (1050-221 BCE), when the theft of national treasures was deemed to be criminal and not exempted from punishment.<sup>55</sup> The main idea underlying these rules was to protect the possessions (including cultural treasures) of the ruling class and the imperial treasures against infringement. The ancient Chinese laws contained provisions concerning the civil matters with respect to ownership which even included penalty provisions.<sup>56</sup>

When it comes to the 1800s, i.e. right before the colonial invasion of China, the Great Qing Code (*Ta Tsing Leu Lee*) was enacted by the Qing Court (governor of China at that time) mainly for protecting the cultural and luxury goods of the emperor and the royal family, including all the cultural objects. No private person could acquire any of them.<sup>57</sup> Viewed in this light, all the objects from the Old Summer Palace and other imperial estates of the Qing Court were owned by the State. Anyone removing the objects or the fragments of the Palace would be in breach of law. Though the Great Qing Code did not meet the standards by which modern cultural heritage law is defined,<sup>58</sup> according to the Code and the rules of state succession the Government of the People’s Republic of China is still considered the rightful owner of the objects looted during the wars.<sup>59</sup>

It should also be noted that with the growing cultural expropriation by foreign explorers and colonial powers discussed above, the late Qing Court became aware of the increasingly pervasive situation of the security of its cultural heritage and took measures to protect them by transforming its governing system and promulgating new laws. In 1906, the Ministry of Civil Affairs was established, with a mandate to protect monuments and cultural sites. It proposed the Measures for the

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<sup>54</sup> J. Hughes, *The Trend toward Liberal Enforcement of Repatriation Claims in Cultural Property Disputes*, “The George Washington Journal of International Law and Economics” 2000, Vol. 1.

<sup>55</sup> J. Zhao, *An Overview of the Chinese Cultural Relics Protection System through the Ages*, “Archaeology and Cultural Relics” 2003, Vol. 3 (in Chinese).

<sup>56</sup> For a discussion about the legal nature of the ancient Chinese law, see Z. Liu, *op. cit.*, pp. 88-89.

<sup>57</sup> J. Zhao, *op. cit.*

<sup>58</sup> This modern cultural property law is supposed to include regulations prohibiting transactions and the smuggling of cultural properties, as well as archaeological excavations carried by foreigners, see J.M. Jacobs, *op. cit.*

<sup>59</sup> See Z. Liu, *op. cit.*, p. 90.

Preservation and Promotion of Monuments (*Bao Cun Gu Ji Tui Guang Ban Fa*), which were then signed by the emperor. The Measures focused mainly on investigative and preservation issues with respect to cultural sites, and in their preamble articulated particular concern over the looting of cultural objects during the wars.<sup>60</sup>

Following the foundation of the Republic of China in 1912, a series of national and/or local laws, regulations, and decrees were launched to enhance the protection of cultural heritage, some of which are significant and need to be highlighted. In 1916, the Interim Measures for the Preservation of Antiquities (*Bao Cun Gu Wu Zan Xing Ban Fa*) were published by the Ministry of Internal Affairs, prohibiting the frottage or imitation, destruction, or smuggling of antiquities created before the foundation of the Government of the Republic of China, and preventing antiquities from being illicitly exported to other countries.<sup>61</sup> At the local level, regulations were enacted to protect specific heritage sites. For example, the Government of Henan Province issued its Regulations for the Preservation of Longmen Stone Buddha Statues (*Bao Shou Longmen Shi Fo Gui Tiao*) in 1916. These regulations were mainly aimed at the protection of sculptural statues from the Longmen Grottoes, which were subject to severe looting and destruction. Thus destruction and theft were therefore both prohibited.<sup>62</sup> Besides, the statues in the Longmen Grottoes were tracked, calculated, and inventoried, which provided a vital reference for investigation when the later destruction and theft of the site took place.

A more comprehensive regulation on the protection of cultural heritage was promulgated in 1928, namely the Ordinance for the Preservation of Monuments and Antiquities (*Ming Sheng Gu Ji Gu Wu Bao Cun Tiao Li*), which had a clearer classification of different kinds of movable or immovable cultural heritage objects. Any theft of monuments and antiquities was considered as a criminal offence and would be penalized.<sup>63</sup> The investigation and registration of a wide range of monuments and antiquities were conducted after that time. In 1930, the Law on the Preservation of Antiquities (*Gu Wu Bao Cun Fa*) was enacted as a reaction to the increasingly rampant smuggling of cultural objects, especially those taking place along the old Silk Road.<sup>64</sup> It provided that all the antiquities underground, or exposed from underground, are owned by the State. The legal status of state ownership was thus established. According to the Law, the trade in antiquities was only allowed within the borders of China, while any unauthorized excavation would be deemed

<sup>60</sup> W. Liu, *Ministry of Civil Affairs in Late Qing Dynasty and Cultural Heritage Protection in Modern China*, "Journal of National Museum of China" 2020, Vol. 3 (in Chinese).

<sup>61</sup> X. Li, *Commentary on the History of Cultural Relics Regulation in the Republic of China*, Antiquity Press, Beijing 2013 (in Chinese).

<sup>62</sup> *Ibidem*.

<sup>63</sup> S. Zhang (ed.), *Selected International Charters and Domestic Legislation for the Protection of Urban Cultural Heritage*, Tongji University Press, Shanghai 2007 (in Chinese).

<sup>64</sup> J. Cuno, *op. cit.*, p. 94.

theft. Besides, the Central Committee for the Preservation of Antiquities, in charge of the annual registration of cultural heritage objects and sites, was established.

In conclusion, it is beyond doubt that the looting and smuggling of cultural objects during the colonial era in China had drawn the attention of legislators at that time, and that a series of regulations were issued to prevent further loss and destruction. Those collectively provided a clear rule that the destruction and theft of cultural objects were prohibited and would be punished by law. To some extent, the state ownership of the cultural objects was also thereby recognized. However, before the enactment of the 1930 Law on the Preservation of Antiquities – which clarified the state ownership for the first time – not all cultural objects, especially archaeological findings, belonged to the government. It is therefore a case-by-case question to establish the sufficient legal basis for the ownership of cultural objects taken from the colonial context. In some cases, additional evidence is needed, such as the registration and inventory of the antiquities. On the other hand, due to the social and political instability during the colonial era, these laws were not strictly enforced.<sup>65</sup>

## Private law issues

The principle of *bona fide* acquisition and the limitation periods for filing claims play an important role in the modern private law system. They aim at maintaining a balance between the original owner and the purchaser or possessor, safeguarding commercial transactions; and avoiding temporary uncertainty vis-à-vis property rights. However, these rules do not usually favour the restitution of cultural objects and in fact may become obstacles thereto.

According to the rule of *bona fide* acquisition, in many legal systems a possessor who bought a stolen object in good faith and without knowledge that it was stolen or transferred unlawfully would be able to keep possession of the object. In cases of their restitution, the burden of proof of good faith – and due diligence during acquisition and the conduct of provenance research – would rest upon the purchaser. However, even if a possessor failed to prove that he/she acquired the property in good faith, in many legal systems he or she could continue to keep the object(s) owing to the lapse of time according to the limitation periods of many laws in place. For example, according to the Japanese Act on Controls on the Illicit Export and Import and Other Matters of Cultural Property, the total period of time to make a claim for the recovery of cultural objects by the original owner was extended from 10 years (*bona fide* acquisition under Articles 192-193 of the Civil Code of 1896) to 20 years if the possessor fails to fulfil the conditions of good faith as stipulated in the Civil Code of 1896.<sup>66</sup> Viewed in this light, for those objects that were

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<sup>65</sup> Z. Liu, *op. cit.*, p. 87.

<sup>66</sup> 文化財の不法な輸出入等の規制等に関する法律 [Act on Controls on the Illicit Export and Import and Other Matters of Cultural Property], 3 July 2002, Art. 6 (English translation: <https://www.japaneselawtranslation.go.jp/en/laws/view/3791/en> [accessed: 27.09.2022]).



looted or removed from China and sold in Japan, even if the purchasers were fully aware of the illegal trafficking of the objects the time lapse guaranteed a defence which enabled them to obtain permanent ownership title of the objects.<sup>67</sup>

This to some extent explains why many transactions involving looted cultural objects were often private and confidential before, but appear in the public art market in recent years. When a cultural object was removed from the country of origin (i.e. China), the provenance information concerning it was also removed and blurred as time went by. The possessor was thus able to take advantage of the passage of time and the vagueness of provenance research to explicitly “legitimize” the unlawful possession of the cultural objects, making it more difficult for the country of origin (i.e. China) to locate the object and bring a claim.<sup>68</sup>

### International law issues

From the perspective of international law, a few international conventions and bilateral agreements were concluded after the Second World War to promote the return and restitution of cultural property, although they concerned different aspects. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (“the 1954 Hague Convention”);<sup>69</sup> the 1970 UNESCO Convention; and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (“the 1995 UNIDROIT Convention”)<sup>70</sup> are the main sources of the usage and application of multilateral mechanisms. At the level of bilateral cooperation, as of March 2020 China had signed agreements or memorandums for the cooperative enforcement of laws on the protection of cultural heritage and the fight against the illicit trafficking of cultural heritage with 23 countries.<sup>71</sup> Although the multilateral or bilateral mechanisms have been playing increasingly important roles in international cooperation and law enforcement concerning the protection and return of cultural objects, their competences and effectiveness should not be overestimated, especially when dealing with objects lost in a distant past, i.e. cultural objects from colonial contexts.

Firstly, the main blind spot that the international conventions or agreements are faced with is their inability to have retroactive effect vis-à-vis properties lost before the conventions entered into force.<sup>72</sup> From a historical point of view,

<sup>67</sup> H. Liu, *Stolen Chinese Buddha Head First Returns from Japan*, “Art Antiquity and Law” 2021, Vol. 26(1).

<sup>68</sup> N. Brodie, *An Archaeologist’s View of the Trade in Unprovenanced Antiquities*, in: B.T. Hoffman (ed.), *Art and Cultural Heritage: Law, Policy and Practice*, Cambridge University Press, Cambridge 2006, pp. 52-63.

<sup>69</sup> 14 May 1954, 249 UNTS 240.

<sup>70</sup> 24 June 1995, 2421 UNTS 457.

<sup>71</sup> W. Yan, *Return of Cultural Heritage Celebrated, but China Has to Do More*, “CGTN”, 2 March 2020, <https://news.cgtn.com/news/2020-03-01/Return-of-cultural-heritage-celebrated-but-China-has-to-do-more-Ot-ZAmcLboY/index.html> [accessed: 25.09.2022].

<sup>72</sup> The principle of non-retroactivity of law was recognized by the Article 28 of the Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331.

the claims for return and restitution of colonial cultural properties fall well beyond the time scope of the validity of the international conventions. Although during the drafting of the 1970 UNESCO Convention some countries of origin suggested that the Convention be made retroactive with respect to cultural objects illegally removed before the required ratification of the Convention, with the aim of promoting the return of the cultural objects not acquired in good faith, in the end the final version of the Convention is not retroactive.<sup>73</sup> Its retroactivity is left to the State Parties. In the Operational Guidelines of the 1970 Convention, State Parties are encouraged to find a mutually acceptable way to deal with items illegally removed before the entry into force of the Convention.<sup>74</sup>

Secondly, the scope of application of the international conventions depends not only on their preambles, but also on the number and composition of their State Parties. For example, the 1954 Hague Convention expresses concern mainly about the direct effect or threat to cultural properties by wars, and promotes the return of cultural properties that are removed out of the conflict zone for the purpose of their protection. In other words, although the Convention condemns the theft and illicit trafficking of cultural property during armed conflicts, it does not provide obligations on the part of the State Parties to return the cultural objects stolen or illegally exported from the country during war.<sup>75</sup> What's more, due to the orientation towards favouring the return and restitution of stolen or illegally exported cultural goods,<sup>76</sup> the "market countries" which are State Parties to the 1995 UNIDROIT Convention are far less in number than the parties being countries of origin.<sup>77</sup> This results in an imbalance in the membership and the weak enforceability of the Convention.

Thirdly, the implementation of the international conventions is another reason that leads to their weakness. Some provisions of the 1970 UNESCO Convention, for example, are vague and lack precise conditions, instead relying on explanations and their voluntary implementation by the State Parties. This "constructive

<sup>73</sup> UNESCO, *Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Final Report Prepared in Compliance with Article 10.1 of the Rules of Procedure concerning Recommendations to Member States and International Convention Covered by the Terms of Article IV, Paragraph 4, of the Constitution*, 27 February 1970, UN Doc. SHC/MD/5, Annex II, p. 10.

<sup>74</sup> UNESCO, *Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (UNESCO, Paris, 1970), para. 103, [https://en.unesco.org/sites/default/files/operational\\_guidelines\\_en\\_final\\_final\\_1.pdf](https://en.unesco.org/sites/default/files/operational_guidelines_en_final_final_1.pdf) [accessed: 25.09.2022].

<sup>75</sup> See R. O'Keefe, *The Protection of Cultural Property in Armed Conflict*, Cambridge University Press, Cambridge 2006, p. 198.

<sup>76</sup> F. Francioni, *Plurality and Interaction of Legal Orders in the Enforcement of Cultural Heritage Law*, in: F. Francioni, J. Gordley (eds.), *Enforcing International Cultural Heritage Law*, Oxford University Press, Oxford 2013, p. 14.

<sup>77</sup> For the list of State Parties of the 1995 UNIDROIT Convention, see <https://www.unidroit.org/instruments/cultural-property/1995-convention/status/> [accessed: 25.09.2022].

ambiguity” in the texts of conventions – such as “necessary reparations”, “necessary concrete measures”, “by all appropriate means”, without explanation about what is “necessary” or “appropriate” – gives full discretion to the State Parties. On one hand this is good in terms of harmonizing the differences between States and attracting more State Parties, but on the other hand it leaves them with too much discretion and undermines the purpose and utility of the Convention.<sup>78</sup>

Although it is hard for the current international legal instruments to provide a legally binding obligation on the part of the “colonizer States” to facilitate the return of cultural objects back to their countries of origin, the ethical principles of the international conventions can still constitute a soft law basis for their return. International mechanisms – such as the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP) – provide a stage for the parties to negotiate for the return or restitution of cultural objects that “have been lost as a result of colonial or foreign occupation”.<sup>79</sup> The Resolution adopted by the UN General Assembly concerning the restitution of works of art also calls attention to the independent rights of those countries formerly under colonial control or occupation, and to the prohibition of transactions and the restitution of works of art looted from those countries.<sup>80</sup> A statement by the Chinese delegation to the UN in 1973 should also be noted, as it declared that the cultural objects looted, stolen, or removed from China during the colonial context were destructive to the cultural identity of the Chinese people.<sup>81</sup>

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<sup>78</sup> K. Jore, *The Illicit Movement of Art and Artifact: How Long Will the Art Market Continue to Benefit from Ineffective Laws Governing Cultural Property?*, “Brooklyn Journal of International Law” 1987, Vol. 13, pp. 55, 64.

<sup>79</sup> UNESCO, *Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation*, October 2005, UN Doc. CLT/CH/INS-2005/21, Art. 3(2).

<sup>80</sup> See UNGA, *Resolution 3187 (XXVIII): Restitution of Works of Art to Countries Victims of Expropriation*, 18 December 1973, UN Doc. A/RES/3187(XXVIII); UNGA, *Resolution 3391 (XXX): Restitution of Works of Art to Countries Victims of Expropriation*, 19 November 1975, UN Doc. A/RES/3391(XXX); UNGA, *Resolution 31/40: Protection and Restitution of Works of Art as Part of the Preservation and Further Development of Cultural Values*, 30 November 1976, UN Doc. A/RES/31/40; UNGA, *Resolution 32/18: Restitution of Works of Art to Countries Victims of Expropriation*, 11 November 1977, UN Doc. A/RES/32/18.

<sup>81</sup> The full text is as follows: “The precious cultural heritage of the Chinese people also suffered from plunder and destruction by imperialists and colonialists. In the past 100 years, starting from 1840, troops of the imperialist powers invaded China many times, and each time the cultural heritage of the Chinese people suffered tremendously. They took away what they could, smashed those items which they could not take as a whole, and then took away the pieces, and destroyed and burned what they eventually could not take away. Apart from the large scale plunder and destruction by the invading troops, China’s historical relics and art treasures were also stolen by adventurers of different kinds, by means fair or foul”. See *Statement on the Issue of Return of Plundered Works of Art to its Country*, by Comrade Wang Runsheng, 18 December 1973, in: *Selected Documents of the Chinese Delegation to the United Nations*, The People’s Press, Beijing 1973, pp. 56-57.

## Concluding Remarks

A “post-colonialism turn” provides a way for the current generation to resolve and overcome the problems left by the past. Even though there are some arguments in support of the claim that transactions concerning cultural objects during the colonial era could have been lawful – for example that, based on the authorization of the governments of the day, the cultural expeditions and the sale of objects and materials from Dunhuang Grottoes in North Western China<sup>82</sup> – as argued by Jeremiah J. Garsha, under colonial systems there was no fair exchange and any transaction between the colonizers and the colonized is an example of an acquisition taken under duress.<sup>83</sup>

One of the major reasons that the countries of origin file claims for the return of their cultural objects is that they are trying to make up for the loss of their cultural sovereignty. Since the cultural material itself is affiliated with the civilization, the nation, or the Indigenous communities in question, it is by its nature one of the fundamental aspects of their cultural sovereignty. Viewed in this light, the story of cultural objects – from their being lost to their being recovered – is an entire interconnected process showing how the cultural sovereignty and cultural confidence of a civilization, a country, or an Indigenous community is deprived, rebuilt, and then enhanced. This constitutes the motivation for us to talk about cultural decolonization.

Cultural sovereignty is the inner characteristic of a nation, which nourishes its existence and development. It is deeply rooted in the cultural identity and spiritual values of the nation.<sup>84</sup> To be specific, cultural sovereignty is one of the indispensable components of the sovereignty of a modern country, and the logical extension of sovereignty in the area of culture – which is the independent right of a country to regain and incorporate its cultural benefits and cultural recognition, including the respect of its cultural diversity from around the world – is the cornerstone of the international governance of cultural heritage.<sup>85</sup>

Implementation of the notion of cultural sovereignty may help to understand the extent of the damage caused by the colonial powers, as well as the reason why the countries of origin, such as China, are trying to recover their cultural objects taken in colonial contexts. The path of recovery is also part of the way to mend the cultural sovereignty of a nation. Therefore, more negotiations should be conducted

<sup>82</sup> Passports were granted to some explorers and archaeologists during the period of the old government in the late 19th century, while the taking of the cultural property out of the territory of China was not granted. See J.M. Jacobs, *op. cit.*, p. 20.

<sup>83</sup> J.J. Garsha, *Expanding Vergangenheitsbewältigung? German Repatriation of Colonial Artefacts and Human Remains*, “Journal of Genocide Research” 2020, Vol. 22(1).

<sup>84</sup> W. Coffey, R. Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, “Stanford Law & Policy Review” 2001, Vol. 12(2).

<sup>85</sup> Z. Huo, R. Chen, *op. cit.*

based on respect for the cultural independence of the country of origin and the cultural identity that a civilization is relying on for its evolution. Viewed in this light, the basis for the return and restitution of cultural objects from colonial contexts should be discussed beyond the sphere of just applying private laws and international conventions, and with a broader reliance on ethical principles and mutual understanding.

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