



UNIVERSITÉ
DE GENÈVE

FACULTÉ DE DROIT
Centre du droit de l'art



United Nations
Educational, Scientific and
Cultural Organization

In partnership with
UNESCO

Meng Yu, Ece Velioglu Yildizci, Marc-André Renold

January 2017

3000 Archeological Objects – China and Two British Dealers

China/Chine – British Dealers/marchands d'art anglais – Archaeological object/objet archéologique – Post 1970 restitution claims/demandes de restitution post 1970 – Judicial claim/action en justice – Negotiation/négociation – Settlement agreement/accord transactionnel – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Ownership/propriété – Unconditional restitution/restitution sans condition

On 10 February 1998, the Chinese government and two British dealers signed an out-of-court agreement that resolved the question of ownership of over 3000 archaeological objects. Most probably these were transferred to the United Kingdom through illegal excavation and trafficking. This early case shows how countries, both exporting (like China) and importing (like the United Kingdom), had to review and adapt their systems to better combat against the illicit traffic.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

ART-LAW CENTER – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

art-adr@unige.ch – <https://unige.ch/art-adr>

This material is copyright protected.

I. Chronology

Post 1970 restitution claims

- **Summer 1994:** The London Metropolitan Police (Scotland Yard) accidentally discovered a large ship of smuggled archaeological objects from China, when pursuing a tip that smuggled cultural property from Egypt was about to land on UK shores.¹
- **February 1995:** After an investigation, the British police traced an international trafficking gang involved with the case and informed the Chinese embassy in Britain.²
- **10 March 1995:** The British police raided two harbors and seized over 6,000 smuggled archaeological objects from China and other countries.³
- **April 1995:** Two authentication experts from China's State Administration of Cultural Heritage (SACH) flew to London to identify the widely unprovenanced cultural objects upon the British Police's request.⁴ In a later second examination in **December 1996**, Chinese experts confirmed that the smuggled cultural objects from China amounted to a total of **3,494 items** and were mostly archaeological materials of clandestine excavations.⁵ Dating from the Stone Age through the Qing Dynasty, the wide assortment of objects were believed to be from all across China, especially provinces in central China, including Shanxi, Shaanxi and Henan.⁶
- **July-August 1995:** The British police, with support from the Chinese government, flew to China to complete an on-site survey in Beijing, Shanxi, Henan and Guangdong.⁷
- **1 March 1996:** SACH wrote to the British government requesting the return of these objects.⁸ Meanwhile, the British prosecutors (Crown Prosecution Service) decided not to file a case against the two dealers, who were involved in the raids (hereafter British Dealers), on a procedural ground. Since the actual transaction had taken place in Hong Kong, not in mainland Britain,⁹ the prosecutors believed that the prosecution should be launched in Hong Kong, which was at that time under British Crown rule. To our knowledge, no prosecution has been initiated in Hong Kong either.

¹ Meg Maggio, "A Change of Climate," *The Art Newspaper*, November 1998, 45.

² Bingwu Cao, "The Case of China Repatriating Smuggled Cultural Relics," [Zhongguo Suohuan Zousi Wenwu Anli], *Museum International* (Chinese Version) 61 (2009): 144.

³ Hao Liu, "Unlocking the secrets of repatriation at the end of the twentieth century: the recovery of 3,494 Chinese cultural artefacts from the United Kingdom in 1998," *Art Antiquity & Law* 21.1 (2016): 37.

⁴ Xing Wang, "The Return of Cultural Relics in China," [Zhongguoshi Wenwu Huigui], *Life Week*, December 21, 2009, accessed November 2, 2016, <http://www.lifeweek.com.cn/2009/1221/26966.shtml>.

⁵ Cao, "The Case of China Repatriating Smuggled Cultural Relics," 145.

⁶ Among these were the head of a stone tablet weighing more than a ton; coloured pottery from the New Stone Age; bronze mirrors and swords from the Warring States Period; blue sheep and large ceramic figurines from the Han Dynasty, and ornaments from other dynasties. Maggio, "A Change of Climate," 45.

⁷ Cao, "The Case of China Repatriating Smuggled Cultural Relics," 146.

⁸ Wang, "The Return of Cultural Relics in China."

⁹ Cao, "The Case of China Repatriating Smuggled Cultural Relics," 147.

- **September 1996:** The British Dealers **filed a civil suit** to settle the ownership issue in the Central London County Court. Meanwhile, the Director of SACH, Zhang Wenbin, held meetings with UK police officials in London, claiming ownership of the property.¹⁰
- **10 February 1998:** After over one year of **negotiation**, the Chinese government and the British Dealers signed an out-of-court **agreement**, which provided for the **return of over 3,000 items**.¹¹
- **April 1998:** The antiquities were shipped to China and later displayed in an exhibition at the History Museum of China (now the National Museum of China) in Beijing.¹²

II. Dispute Resolution Process

Judicial claim – Negotiation – Settlement agreement

- The Chinese government did not respond to the lawsuit initiated by the British Dealers in the beginning. The Central London County Court then heard the case in the China's absence and ordered China to appear in court before 17 January 1997, otherwise the court would rule for the plaintiff.¹³ Subsequently, China filed a motion to transfer the suit to the Court of Appeal on 8 January 1997, and later obtained a court order to freeze the property until its formal response to the complaint.¹⁴
- It seems that evidence from the Chinese government put the British Dealers in an unfavorable situation. They then came forward an offer to settle out of court in January 1997. The settlement negotiations began in early 1998, culminating in an agreement on the return of over 3,000 items.¹⁵

III. Legal Issues

Illicit excavation – Illicit exportation – Ownership

- The present case involved various legal questions, none of which was judicially tested. Among them it is noteworthy to focus on the question of whether the requested antiquities had been illicitly excavated and smuggled out of China, and the question of whether China owns these antiquities.
- China argued that most of the requested archeological objects were from clandestine excavations, and then illicitly exported via Hong Kong. Among the evidence regarding the clandestine origin, five epitaphs dating to the Tang dynasty (618-907 AD), documented the

¹⁰ PRC's State Administration of Cultural Heritage. "The PRC Chronicle of Cultural Relics Museums (1949-1999)" [Zhonghua Renmin Gongheguo Wenwu Bowuguan Shiye Jishi], (Beijing: Cultural Relics Press, 2002), 775.

¹¹ Cao, "The Case of China Repatriating Smuggled Cultural Relics," 148.

¹² "Recovered treasures on view in Beijing," *The Art Newspaper*, September 1998, 39.

¹³ Cao, "The Case of China Repatriating Smuggled Cultural Relics," 148.

¹⁴ Wang, "The Return of Cultural Relics in China."

¹⁵ Maggio, "A Change of Climate," 45.

burial date and site of a tomb group in Shanxi Province, an archeological site that was illicitly excavated around 1994.¹⁶ Additionally, the wrapping paper of most objects was identified as the one frequently used among smugglers in North China. This evidence, together with other wrapping material such as local newspapers in Guangdong province, indicated a smuggling route across China, from north to south.¹⁷

- China has a strict legal regime based on a 1982 law vesting ownership in the State for “all cultural objects remaining underground or in the inland waters or territorial seas within its boundaries”, as well as for “sites of ancient culture, ancient tombs and cave temples”. This law also renders it illegal to export such items without an export license.¹⁸ So to establish its ownership claim, China needed to identify the provenance of every object. This entailed a huge amount of work for China, a country that had not yet fully established a national registry.¹⁹ Moreover, since in this case most requested antiquities are undiscovered archeological objects, it is by nature a difficult task for source nations to prove the provenances.

IV. Adopted Solution

Unconditional restitution

- Though the British Dealers did not admit to wrong-doing, they agreed to return over 3,000 archaeological objects.²⁰ This left them with some 400 items, believed on the Chinese side to be fakes or modern handicrafts of little value.²¹
- Likewise, dozens of the objects that a third party acquired from the British Dealers, were also returned to China through a settlement agreement.²²

V. Comment

- It is the first time for China to be involved in a cross-border civil litigation for cultural property claims.²³ In such cases, a requesting party is faced with evidential burden regarding illicitly excavated archaeological objects, and China is no exception. One thing that China might have learnt from this case is, that an up-to-date and accurate national inventory is crucial.²⁴ By now China has completed three nationwide surveys of immovable cultural objects, and is

¹⁶ Liu, “The recovery of 3,494 Chinese cultural artefacts from the United Kingdom in 1998,” 38.

¹⁷ Cao, “The Case of China Repatriating Smuggled Cultural Relics,” 146.

¹⁸ Law of the People’s Republic of China on Protection of Cultural Relics (No. 11 of the Standing Committee of the National People’s Congress, effective as of 19 November 1982, amended in 1991, 2002, 2007, 2013, 2015)

¹⁹ Wang, “The Return of Cultural Relics in China.”

²⁰ Maggio, “A Change of Climate,” 45.

²¹ Neil Brodie, “In the news,” *Culture Without Context* 3 (1998): 6.

²² Cao, “The Case of China Repatriating Smuggled Cultural Relics,” 148.

²³ Ibid.

²⁴ Meg Maggio, “The Sleeping dragon wakes or ... no more Mr. Nice Guy,” *The Art Newspaper*, December 1998, 21.

- conducting its first survey of movable cultural objects, a project aiming to set cultural objects online database.²⁵
- Insufficient export control over cultural objects is one factor contributing to such stunning trafficking cases in late 20th century. However, in recent decades, China has strengthened its export control through legislation and law enforcement. One example can be found in the 2007 rules for entry and exit of cultural objects.²⁶ The new rules provide a total ban on exports of antiquities predating 1911, moving forward the previous cut-off date that stood at 1795.²⁷
 - The illicit trade of antiquities in Hong Kong is an inevitable problem for China. For years, Hong Kong has played the same entrepot role in antiquities trade as it does in the broader economy.²⁸ Before China's takeover of Hong Kong in 1997, Hong Kong was a famed transit port for looted archaeological material from China, as shown in this case. After 1997, it is hard to say that such situation has improved markedly, since Hong Kong remains to be a Free Trade Port and is not bound by the 1970 UNESCO Convention.²⁹ This may remain a challenge for China in preventing illegal trafficking.³⁰
 - It is not impossible that the British Dealers, or “suspected smugglers” as they are often called in Chinese documents, were indeed involved in illegal trafficking, and then got away with it, when the British prosecutors dropped the case on the ground that transaction had not taken place in mainland Britain. However, this may not be the case today. After the acceptance of 1970 UNESCO Convention in 2002, the UK passed the Dealing in Cultural Objects (Offences) Act in 2003. According to this Act, the illegal excavation or removal could take place inside or outside the UK. So, illegal removal from a monument in China could trigger the offence of dealing in tainted cultural objects.³¹ This is the more likely result, should the case happened today.

²⁵ Yuanqing Sun, “Govt to set up cultural relics online database,” *China Daily*, January 15, 2014, accessed November 2, 2016, http://www.chinadaily.com.cn/china/2014-01/15/content_17238034.htm; “Survey on moveable cultural relics registers 45 million pieces,” *Xinhuanet*, March 2, 2015, accessed November 2, 2016, http://news.xinhuanet.com/english/2015-03/02/c_134031079.htm.

²⁶ Administrative Rules for Examination and Approval of Entry and Exit of Cultural Relics. (No. 42, Order of the Minister of Culture, July 13, 2007); Standards for Examination and Approval of Entry of Cultural Relics (No. Wenwubofa [2007]30, State Administration of Cultural Heritage, June 5, 2007).

²⁷ Xiuqin Zhao, “New Standards for Examination and Approval of Cultural Relics Exit,” [Wenwu Chujing Shenhe Biaozhun Genxin], *Market Daily*, July 13, 2007, accessed November 2, 2016, http://paper.people.com.cn/scb/html/2007-07/13/content_13416490.htm.

²⁸ Jonathan Napack, “Hard times on Hollywood Road,” *The Art Newspaper*, March 1998, 50.

²⁹ This is due to the autonomy that Hong Kong enjoys as a Special Administration Region (SAR) under the “One Country, Two Systems” policy, as well as the fact that the 1970 UNESCO Convention is not automatically applicable to Hong Kong, after China's takeover of Hong Kong.

³⁰ Kate Fitz Gibbon, “Import Ban on Chinese Art Creates An Uneven Playing Field,” *The Art Newspaper*, March 1, 2014, accessed November 3, 2016, <http://old.theartnewspaper.com/articles/Import-ban-on-Chinese-art-creates-an-uneven-playing-field/31860>.

³¹ Dealing in Cultural Objects (Offences) Act 2003, Explanation Note, para.25. (U.K.). ^[1]_[SEP]

VI. Sources

a. Bibliography

- Brodie, Neil. "In the news." *Culture Without Context* 3 (1998): 6.
- Cao, Bingwu. "The Case of China Repatriating Smuggled Cultural Relics." [Zhongguo Suohuan Zousi Wenwu Anli], *Museum International* (Chinese Version) 61 (2009): 144-49.
- Liu, Hao. "Unlocking the secrets of repatriation at the end of the twentieth century: the recovery of 3,494 Chinese cultural artefacts from the United Kingdom in 1998." *Art Antiquity & Law* 21.1 (2016): 31-43.
- PRC's State Administration of Cultural Heritage. "*The PRC Chronicle of Cultural Relics Museums (1949-1999)*" [Zhonghua Renmin Gongheguo Wenwu Bowuguan Shiye Jishi], Beijing: Cultural Relics Press, 2002.

b. Media

- "Survey on moveable cultural relics registers 45 million pieces." *Xinhuanet*, March 2, 2015. Accessed November 2, 2016. http://news.xinhuanet.com/english/2015-03/02/c_134031079.htm.
- Fitz Gibbon, Kate. "Import Ban on Chinese Art Creates An Uneven Playing Field." *The Art Newspaper*, March 1, 2014. Accessed November 3, 2016. <http://old.theartnewspaper.com/articles/Import-ban-on-Chinese-art-creates-an-uneven-playing-field/31860>.
- Sun, Yuanqing. "Govt to set up cultural relics online database." *China Daily*, January 15, 2014. Accessed November 2, 2016. http://www.chinadaily.com.cn/china/2014-01/15/content_17238034.htm.
- Wang, Xing. "The Return of Cultural Relics in China." [Zhongguoshi Wenwu Huigui], *Life Week*, December 21, 2009. Accessed November 2, 2016. <http://www.lifeweek.com.cn/2009/1221/26966.shtml>.
- Zhao, Xiuqin. "New Standards for Examination and Approval of Cultural Relics Exit." [Wenwu Chujing Shenhe Biaozhun Genxin], *Market Daily*, July 13, 2007. Accessed November 2, 2016. http://paper.people.com.cn/scb/html/2007-07/13/content_13416490.htm.
- Maggio, Meg. "The Sleeping dragon wakes or ... no more Mr. Nice Guy." *The Art Newspaper*, December 1998.
- Maggio, Meg. "A Change of Climate." *The Art Newspaper*, November 1998.
- "Recovered treasures on view in Beijing." *The Art Newspaper*, September 1998.
- Napack, Jonathan. "Hard times on Hollywood Road." *The Art Newspaper*, March 1998.