

Legal protection of cultural heritage in China: a challenge to keep history alive

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This article provides an in-depth examination of the current Chinese legal regime for cultural heritage protection from two perspectives, i.e. from that of legislation and law enforcement and highlights the deficiencies thereof. The article argues that China has to improve and reform its domestic law to rectify the blatant shortcomings of the existing statutes and to implement the international instruments that it has concluded or acceded to; Moreover, China should reform its administrative system of cultural heritage protection to overcome the obstacles to efficient law enforcement whose success, in turn, depends on the comprehensive reform promised by the Communist Party of China.

Keywords: legal protection; cultural heritage; China

Introduction

Because of the vastness of the area and the long, splendid and unique cultural history, China is extremely rich with cultural heritage.¹ The tremendous amount, and the enormous variety, of cultural heritage are the priceless treasures not only of Chinese people, but also of humanity as a whole.

However, since the mid nineteenth century, cultural heritage in China has suffered for a very long time from armed conflicts, looting, clandestine excavation, smuggling, illicit trade and deliberate destruction. The crimes against cultural heritage have not been effectively deterred in China even today. Since the adoption of its policy of reform and opening up at the end of the 1970s, China has achieved remarkable progress in sustaining high economic growth rates and rising incomes that have eased poverty; however, economic development and globalization have created new problems for cultural heritage protection.

First, rapid industrialisation and urbanisation are taking their toll on Chinese cultural heritage, especially immovable cultural heritage (Gruber 2007, p. 255). With the development of economy and urban expansion, the old parts of many cities are disappearing and being replaced by modern housing areas, and numerous heritage sites are being destroyed by construction projects. Many sites lack protection and fall into despair while others are modeled to suit the needs of mass tourism (Gruber 2007, p. 255). Second, the flourishing of art market as well as today's means of transportation and logistics have made the crimes against cultural

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heritage even more severe (Schmidt 2000, p. 186). Despite improvements in the laws and harsh penalties, tomb robbing, smuggling, and illicit traffic have bedeviled cultural heritage protection in China since the 1980s (Murphy 1995a, p. 242).

Thus it follows that China's present legal regime does not effectively protect its cultural heritage. In this light, a critical review of the legal protection of cultural heritage in China is both beneficial and necessary.

The purpose of this article is twofold. First, it provides an in-depth examination of the current Chinese legal regime for protecting cultural heritage from two perspectives, i.e. from that of legislation and law enforcement. Second, it highlights the deficiencies of the Chinese heritage protection regime in order to suggest possible areas of improvement and reform.

Cultural heritage legislation in China

The past three decades have witnessed an amazing acceleration in the rate of, and significant progress in the quality of, legislation in the People's Republic of China (PRC). Nevertheless, there is a long way to go towards accomplishing the task of building a modern legal system. The current crossroads at which China finds itself is graphically illuminated by the legislative development in the field of cultural heritage protection.

On the one hand, a relatively systematic legal regime for cultural heritage protection has gradually taken shape whose significance cannot be overestimated (Huo 2013a, p. 258). In 1982, China embedded the duty of the state to protect its cultural heritage in the Constitution. Based on the provision of the Constitution, the Chinese national legislatures have enacted various national statutes to protect cultural heritage. In addition to establishing and improving its domestic legal framework, China has ratified a number of international treaties with regard to the protection of cultural heritage.

On the other hand, China's legal regime for cultural heritage protection is far from being perfect which are fraught with the problems such as outdated provisions, ambiguous language, and weak enforcement, etc. Cultural heritage law is certainly one of the areas that still need further efforts to provide effective protection for China's great heritage (Gruber 2007, p. 273).

Chinese domestic law

Since the 1980s, the National People's Congress (NPC) and its Standing Committee (NPCSC) have enacted various national statutes that have direct bearing on the protection of cultural heritage among which the Law of the PRC on the Protection of Cultural Objects (Cultural Objects Law) and the Criminal Code of the PRC (Criminal Code) are most relevant.

Cultural objects law

The most significant applicable national statute is the Cultural Objects Law which was passed at the 25th Session of the NPCSC on 19 November 1982, coming into force on the same day. The Cultural Objects Law is still effective at present after substantial amendments, assuming a prominent role in cultural heritage protection in China (see Newell 2008).

When first enacted, the Cultural Objects Law contained 33 articles arranged under eight chapters, with headings that are indicative of their respective scope. Chapter One, 'General provisions' (articles 1–6); Chapter Two, 'Entities in charge of the protection of cultural objects' (articles 7–15); Chapter Three, 'Archaeological excavations' (articles 16–21); Chapter Four, 'Cultural objects in the collection of public institutions' (articles 22–23); Chapter Five, 'Cultural objects in private collection' (articles 24–26); Chapter Six, 'Taking cultural objects out of the PRC'; (articles 27–28); Chapter Seven, 'Rewards and penalties' (articles 29–31); and Chapter Eight, 'Supplementary provisions' (articles 32–33).

Though relatively simplistic and rather conservative judging by today's standard, the Cultural Objects Law is significant in the following aspects: First, it provides the definition and the categories of cultural objects, sets up the principles in the protection of cultural objects, and charges the governments at all levels with responsibility for protecting and administering cultural objects. Second, it establishes the state ownership of undiscovered cultural objects and prohibits their export without state authorization, and allows for their expropriation and confiscation in case of illegal export. Third, it allows for both state ownership and private ownership of cultural objects. Of the latter, it noted that: 'Ownership of cultural objects handed down from generation to generation which belongs to collectives or individuals shall be protected by state laws.' This restatement of private cultural property ownership rights in the PRC marked a very big change in Chinese law (Cuno 2008, p. 95).

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

Nonetheless, with China's economic restructuring, the 1982 Cultural Objects Law could no longer meet the requirements of the new situation. Under such a circumstance, making amendment to the Law was put on the agenda of the NPC. Up to now, the Cultural Objects Law has been amended four times: in 1991, 2002, 2007 and 2013 respectively. Among these amendments, the 2002 Amendment was substantive, whereas the rest are but minor modification to certain articles.² Hence, the amendment in 2002 is worthy of special concern.

After the amendment in 2002, the Cultural Objects Law has expanded from 33 articles to 80 articles and the chapters have been reshaped as follows: Chapter One, 'General provisions' (articles 1–12); Chapter Two, 'Immovable cultural objects' (articles 13–26); Chapter Three, 'Archaeological excavations' (articles 27–35); Chapter Four, 'Cultural objects in the collection of public institutions' (articles 36–49); Chapter Five, 'Cultural objects in private collection' (articles 50–59); Chapter Six, 'Entry and exit of cultural objects' (articles 60–63); Chapter Seven, 'Legal liabilities' (articles 64–79); and Chapter Eight, 'Supplementary provisions' (article 80). The major changes made by the 2002 Amendment can be summarised as follows.

First, the 2002 Amendment establishes protection, instead of exploitation, as China's highest priority for the administration of cultural heritage, which indicates that the Chinese government has fully realized that inappropriate commercialization and over-exploitation are serious threats to cultural heritage.

Second, the 2002 Amendment bans the sacrifice of cultural heritage for economic development and makes it clear that the governments shall incorporate the undertaking of the protection of cultural heritage into their own plans for economic

and social development and the expenses entailed shall be listed in their own budgets.

Third, the 2002 Amendment establishes officially sanctioned cultural objects shops and auction enterprises to assist in cataloging and tracking cultural heritage. It should be mentioned that auction enterprises are banned from establishing cultural objects shops and vice versa, insofar as these two mechanisms for establishing a licit cultural property market are distinct (Taylor 2006). Nonetheless, they share the similar requirement that administrative officials should be permitted to examine and verify each cultural object for sale or exchange. More importantly, Article 58 grants the government broad power to ‘designate an institution for the collection of state-owned cultural objects to enjoy the priority in purchasing the valuable objects up for auction during the mandatory examination period’. In addition, cultural objects shops and auction enterprises shall keep records of cultural objects they purchase, sell, or auction, and submit the records to the administrative department of cultural objects for centralized cataloging.

Fourth, and more strikingly, the 2002 Amendment partially legalises private transactions involving cultural objects which had been completely prohibited by the 1982 Law. The limited legislation of private transactions and the creation of a licit cultural property market in China under the 2002 Amendment are considered as the most significant departure from the 1982 Law (Dutra 2004, p. 83).

Other important changes embodied in the 2002 Amendment include: (1) it prohibits state-owned cultural objects and ‘valuable’ non-state-owned cultural objects from being exported from China at all, except in certain and limited cases for exhibition, and incorporates the procedure for temporary entry of cultural objects and their re-exit; (2) it improves the chapters on immovable cultural objects, archaeological excavations and legal liabilities, and (3) it establishes that the State Administration of Cultural Heritage (SACH) is in charge of cultural heritage protection nationwide³; whereas in the 1982 Law, the Ministry of Culture (MOC) assumed that authority.

The amendment to the Cultural Objects Law in 2002 are geared to the adaptation to the new situation with the purpose of strengthening cultural heritage protection, preventing the practices by some local governments of sacrificing cultural heritage for economic development and, reinforcing the legal measures to combat the crimes against cultural heritage. Needless to say, these efforts are a step in the right direction; however, the 2002 Amendment fails to solve most of the problems embodied in the 1982 Law which merely perpetuates those very flaws.

First, the 2002 Amendment continues the definitional flaws of the 1982 Law. Under the 1982 Law, China established the grading system pursuant to which cultural objects are classified into ‘valuable’ cultural objects and ‘ordinary’ cultural objects which are subject to different levels of protection. However, there was no substantive guidance to differentiate between ‘valuable’ and ‘ordinary’ cultural objects. Instead of clarifying the grading system, the 2002 Amendment goes on to reinforce the elusive grading system.

Under Article 3(2) of the 2002 Amendment, ‘valuable’ cultural objects are further broken down into grade-one, grade-two, and grade-three cultural objects. In an administrative order issued by the MOC, more specific guidance is provided to classify these grades, under which grade-one cultural objects are defined as ‘especially important for historic, artistic, and scientific values’, grade-two cultural objects are those cultural objects that have ‘important’ cultural value, grade-three

cultural objects are 'relatively important' to China's cultural heritage, and 'ordinary' cultural objects are those that only have 'certain historic, artistic, and scientific value'. Though these standards are more specific and may aid in the categorisation of cultural objects, it is difficult to effectively classify all cultural objects precisely by applying these subjective criteria.

It should be emphasised that the indeterminacy of the grading system reveals one of the inherent flaws of China's legal regime to protect cultural heritage (Lau 2011). In the first place, the classification of cultural property under the grading system determines which level of government is responsible for the protection of those property, the vagueness of the grading system, inevitably, would lead to the lack of certainty on the allocation of responsibility between the governments at different levels. Second, though the 2002 Amendment partially legitimises private transactions involving cultural property, it prohibits private transactions involving, *inter alia*, 'valuable' non-state-owned cultural objects in institutional collections, the subjective grading system would make it very difficult for the parties concerned to predict whether a given object can be traded licitly. Third, the ban on exporting 'valuable' non-state-owned cultural objects is almost impossible to enforce, as it suffers from the same definitional vagueness as to what is a valuable object. Fourth, the vagueness exacerbates the problems of determining the administrative sanctions as well as the criminal penalties for offenders. Another serious problem that cannot be neglected is that the elusive grading system is highly vulnerable to corruption.

Second, though the 2002 Amendment partially legitimises cultural property market, it, however, generally prohibits private parties from commercial activities of cultural objects. Article 50 of the 2002 Amendment permits 'citizens, legal persons, and other organizations' to collect cultural objects obtained through any of the following methods: (1) legal inheritance or gift; (2) purchase from cultural objects shops; (3) purchase from auction enterprises; (4) exchanges of privately owned objects or transfers of them pursuant to law; and (5) other lawful methods prescribed by the State. Moreover, Article 55 goes on to state that except for approved cultural stores and auction enterprises, no other organisation or individual is permitted to undertake commercial activities of cultural objects. Hence, private parties are not permitted to buy or sell cultural objects even if the properties are legally privately owned, unless the transactions are conducted through officially sanctioned cultural objects shops and auction enterprises.

Apparently, such an arrangement reflects the concern of Chinese legislators that permitting private parties to commercial activities in cultural objects would encourage theft and clandestine excavation (Newell 2008, p. 38). However, the author submits that outlawing such activities is neither justified nor necessary.

First, such prohibition is not justified under the current Chinese legislative framework. An individual is entitled to dispose the property that he legitimately owns. This is a basic right guaranteed by law, including the General Principles of the Civil Law of (GPCL),⁴ and the Property Law.⁵ Though law may impose restrictions on this right, the prohibition established by the Cultural Objects Law may spark of constitutional challenge. Under China's Constitution, both the NPC and SCNPC are national legislative authorities; however, their legal status and respective authorities are somewhat distinct. The NPC, the highest organ of state power, is entitled to enact and amend basic laws pertaining to criminal offenses, civil affairs, state organs and other matters, while the SCNPC has the authority to enact laws, except those that must be enacted by the NPC. When the NPC is not in session, the

SCNPC can also partially supplement and amend laws enacted by the NPC as long as the basic principles of these laws are not disregarded (Lin 2000, p. 81). That is to say, the statutes enacted by the NPC are classified as basic laws while those by the SCNPC ordinary ones; it can be further argued that the former have a higher legal status than the latter (Lin 2000, pp. 81–82). In this light, the GPCL and the Property Law adopted by the NPC shall have a higher legal status than the Cultural Objects Law by the SCNPC. Thus the validity of the restriction on the right of private parties to dispose their legitimately owned cultural property is open to debate under the Constitution of the PRC.

In addition to constitutional problem, such prohibition is both unrealistic and impractical. As Chinese have a long tradition of antiquarianism, which reflects the Confucian veneration of and respect for the past (Dutra 2004, pp. 68–69), it is not surprising that private antique market of various scales have sprung up and are expanding in China despite the legal prohibition of private commercial transactions of cultural objects. The enormous size of the market makes it impossible for government to manage though the Chinese authorities know that buying and selling antiques between private parties is widespread (Dutra 2004, p. 69). Therefore, the prohibition of people from undertaking commercial activities in cultural objects does not accord with the cultural tradition and the social reality of China. In this respect, its poor implementation is inevitable.

As a matter of fact, permitting people to undertake commercial transactions of cultural objects to which they have legal title would not encourage theft and clandestine excavation. Pursuant to the Cultural Objects Law, all cultural objects found under the soil, as well as all such objects found in the inland waters and territorial waters of the PRC are owned by the State. As a socialist country, State-owned properties are under special legal protection. According to the Property Law, no institutions or individual shall be allowed to obtain ownership of properties that are by law exclusively owned by the State; nor shall such properties be subject to acquisition in good faith (Ma and Yu 2011, p. 333). Therefore, the worry that the growth of private market would lead to the exacerbation of the crimes against cultural property is both unnecessary and irrational.

Third, the 2002 Amendment fails to provide an effective mechanism to deter illicit trade of cultural property. As mentioned above, recognising the prevailing reality that China has a burgeoning market for cultural property, the Amendment attempts to create a licit cultural property market; however, it does not provide a real disincentive to stop tomb robber and illegal excavators who still have much to gain from the illicit sale of cultural property to smugglers. Additionally, the Amendment grants to the government a purchase option by allowing the State to buy valuable cultural property at a price ultimately determined by the State. As it is unlikely that the government will offer the owner of the cultural property the full market value for the article, less reputable individuals may be unwilling to sell through legal channel. Furthermore, the recordation provision is problematic because many buyers and sellers seek anonymity in cultural property transactions. Thus, the black trade for such objects will remain vibrant as an alternative to the state-sanctioned system for selling cultural property (Dutra 2004, p. 84).

Fourth, legal penalties under the 2002 Amendment are not sufficient to deter violations of the Law. Under Chapter Seven of the 2002 Amendment, remedies are divided into civil liability, criminal penalty, and administrative sanction. As civil liability is devoted to providing compensations, instead of imposing penalties, and

cultural property is often unique and irreplaceable, it is not effective in heritage protection. With regard to criminal penalty, the 2002 Amendment merely states that it will be addressed by the Criminal Code. Hence, administrative sanction is the essential means to protect cultural heritage by the Cultural Objects Law. Though the 2002 Amendment improves the rules of administrative sanction and strengthens the powers of the agencies of cultural heritage protection, the progress, however, is far from being substantial.

First of all, the law enforcement system established by the 2002 Amendment is weak and fragmentary, which will be discussed in more detail in Part 3, *infra*. Moreover, the sanctions under the 2002 Amendment are too mild and subjective. For instance, under Article 66, those who undertake illegal construction at designated protected site, relocate or destroy immovable cultural property shall be fined not less than RMB 50,000 yuan but not more than 500,000 yuan by local governments if the circumstance are 'serious'. Therefore, fines shall be levied if only local law enforcers deem the circumstances reach the degree of seriousness, but there is no definition of 'seriousness' given. Furthermore, even if law enforcers decide to mete out fines, 50,000 yuan is the maximum. Compared with the large profits that can usually be earned from commercial construction and infrastructure projects, this sum can be ignored at all. That is why one Chinese expert says that 'there is nothing that [builders] fear more than coming upon a cultural heritage sites' (Newell 2008, p. 28).

Another example, under Article 70(1), in the case of an institution for the collection of cultural relics, failing to have facilities against fire, robbery and natural damage installed as required by law, local government shall order it to put it right and may, in addition, impose on it a fine of not more than 20,000 yuan. The wording of 'may' instead of 'shall' indicate that the levying of fines is discretionary, rather than mandatory. Consequently, local law enforcers are left with considerable discretion in deciding whether to impose fines in any particular case. Corruption and selective enforcement are, therefore, inevitable. Even if enforcers apply law strictly, a 20,000-yuan fine means nothing to violators. Hence, it is by no means surprising that massive fire ravaged an ancient town in Lijiang, one in Shangri-La and one in Dali in 2013, 2014 and 2015, respectively. According to the investigation, the catastrophe of both accidents is largely attributed to the outdated facilities against fire (As of 16 January 2015, the Caixin listed on its website).

The 2002 Amendment contains other flaws. For example, according to Article 12, moral encouragement or material awards should be granted to individuals who turn discovered cultural property over to the government, donating privately held cultural property to state institutions, and fight against the crimes against cultural property; however, such rewards usually bear no relation to the value of the culture property. It is very unlikely that a cultural object will be turned over to the authorities if the market price is much higher than the reward (Gruber 2007, p. 296).

The criminal code

The Criminal Code of the PRC has played a vital role in combating crimes against cultural heritage. When first enacted in 1979, the Criminal Code contained two articles that regulated criminal offences against cultural heritage. According to Article 173, the smuggling of exit-prohibited valuable cultural objects is punishable by fixed-term imprisonment of not less than three years but not more than 10 years,

and also by fines; where the circumstances are serious, the offense is punishable by fixed-term imprisonment of not less than 10 years or by life imprisonment, and also by confiscation of property; pursuant to Article 174, those who intentionally damage valuable cultural objects or places of historical and cultural interest under State protection, shall be punished by fixed-term imprisonment of not more than seven years (Taylor 2006, p. 248).

Since the 1980s, China has entered a radial transitional period. With the weakening of state control, economy booms, while crimes, including the crimes against cultural heritage, increase rapidly. Under such a historic circumstance, the NPC passed the bill of amending the Criminal Code substantively on 14 March 1997. The Amended Code has devoted an entire section (i.e. Section Four ‘Crimes of obstructing cultural and historic objects control’ under Chapter Six ‘Crimes of disturbing the administration of public administration’) to regulating the crimes against cultural heritage. Compared with the Code of 1979, the Amended Criminal Code of 1997 has expanded the criminal offences against cultural heritage, and increased the criminal penalties.

To be more specific, the Section of ‘Crimes of Obstructing Cultural and Historic Objects Control’ includes six articles which spell out eight categories of crimes against cultural heritage as follows (Gao and Ma 2000): (1) intentionally damaging or destroying valuable cultural objects (Article 324(1)); (2) intentionally damaging or destroying places of historical and cultural interest (Article 324(2)); (3) negligently damaging or destroying valuable cultural objects (Article 324(3)); (4) selling or presenting as a gift to a foreigner any valuable cultural object whose export is banned (Article 325); (5) selling for profit the cultural object of which the sale or purchase is banned by the State (Article 326); (6) selling or presenting as a gift by a state-owned museum, library or other institution any cultural object in its collection, which is under State protection, to any non-State-owned institution or individual (Article 327); (7) illegally excavating or robbing ancient culture sites or ancient tombs (Article 328(1)); and (8) illegally excavating or robbing fossils of ancient human being or vertebrate animals which are protected by the State (Article 328 (2)). Moreover, under Article 151 and Article 264, the smuggling of exit-prohibited valuable cultural objects and the theft of valuable cultural objects are serious criminal offences (Huo 2013b, pp. 160–161).

Under the Amended Code of 1997, the actual criminal penalties imposed on the offences against cultural heritage include fines, confiscation of property, and fixed-term imprisonment up to life imprisonment, and in exceptionally serious cases, even death. Obviously, the employment of harsher penalties, including death penalty, to the perpetrators of these crimes reflects the will of the Chinese government to prevent the proliferation of the crimes against cultural heritage.

Nevertheless, the provisions governing cultural heritage related crimes in the Criminal Code of 1997 are fraught with various defects. First, the provisions suffer the same vagueness as those in the Cultural Objects Law, insofar as the degree of punishment depends on the seriousness of the offenses and the grade of cultural property in question. ‘Serious’ offenses are punishable with longer prison sentences than ‘ordinary’ offenses, and ‘exceptionally serious’ violations may be penalised by capital punishment; however, the problem is that the Code fails to clearly delineate how ‘ordinary’, ‘serious’ and ‘exceptionally serious’ offenses differ (Taylor 2006, p. 248). Furthermore, the wording of Articles 264, 324, 325 and 328 indicate that these articles apply only to ‘valuable’ cultural objects, rather than ‘ordinary’

cultural objects; unfortunately, the inherent vagueness of the grading system, as discussed earlier, would make the enforcement of these articles full of uncertainty and unpredictability.

Second, under Article 324, the criminal offence of intentionally damaging or destroying protected cultural heritage fails to target 'legal persons', which is an other major problem. Article 325 and Article 326 state unambiguously that the crime of selling or giving to foreigners exit-prohibited cultural property and that of selling for profit cultural property whose sale is banned are targeted not only at individuals, but also at legal persons, and if a legal person is guilty of the offense, those directly responsible are criminally liable (Newell 2008, p. 52). In contrast, Article 324 does not mention whether it targets legal persons or not. Hence, it follows that legal persons are not covered by this article (Gao and Ma 2000, p. 570). It merits particularly strong emphasis that there has been much greater destruction of cultural heritage in construction projects than through common crime since the 1980s (Newell 2008, p. 52); in other words, in comparison to individual violators who illegally excavate tombs or smuggle cultural property for profit, construction projects undertaken by legal persons (either develop firms, or local governments) are more dire threats to China's cultural heritage. Within such a setting, the author submits that excluding legal persons from the targets of Article 324 is a serious defect.

Third, criminalising the act of selling or giving to foreigners exit-prohibited cultural property is neither justified nor necessary. In the first place, forbidding any foreigner to acquire cultural property is contrary to international instruments for the protection of human rights which forbid discrimination on the basis of race or nationality. Moreover, forbidding foreigners to acquire exit-prohibited cultural property is not at all necessary. This is because the legislative intent of such prohibition is to prevent valuable cultural property from export; however, this purpose can be achieved by Article 151 which penalises the smuggling of exit-prohibited valuable cultural objects and by Chapter Six entitled 'Entry and exit of cultural objects' of the Cultural Objects Law. Expressed differently, if only foreigners abide by the Chinese regulations on the exit control over cultural property, there is of little necessity to forbid them to acquire Chinese cultural property, or even to penalise the Chinese citizens or legal persons who sell or give them such property.

Before concluding the discussion of the Criminal Code, we have to mention its latest amendment in 2011. The Amended Code of 1997, notwithstanding its progress, has aroused hot debate and criticism. The clamor comes mainly from the international community, and stems from the view that the number of crimes punishable by death under the Amended Code of 1997 is too many (As of 23 August 2013, the Xinhua News Agency listed on its website), which is a major reason that China has, in total numbers, the world's highest number of executions every year. Against this background, reducing the use of capital punishment has been included in the legislative plan of the NPC since the entry of the twenty-first century.

After some years' discussion and preparation, the SCNPC passed the Amendment VIII to the Criminal Code on 25 February 2011, which has reduced the number of capital crimes from 68 to 55. It is particularly worth emphasising that after this amendment, most types of commercial crimes, including all crimes against cultural objects, have been removed from the class of death penalty offenses. Hence, the Amendment VIII to the Criminal Code has considerably softened the penalties imposed on cultural heritage related crimes.

Though Amendment VIII has received high evaluation in the legal community both at home and abroad, many Chinese officials and experts in the community of cultural heritage protection expressed their concern who worry that such amendment would lead to the escalation of the criminal offences against cultural heritage (Huo 2013a, p. 256).

Though their worry is not irrational, the author does not favour such a view for the following reasons. First, judicial practice after the implementation of the Amended Code of 1997 has shown that capital punishment was not much deterrent to those who committed crimes against cultural heritage. This is evidenced by the steady flow of illegally exported or illicit obtained Chinese antiquities appearing on the international art market (Huo 2013b, p. 163).

Second, commercial crimes are not subject to the death penalty, this is a well-established legal principle in most countries (Newell 2008, p. 51); therefore, removing the crimes against cultural objects from the class of death penalty offenses represents a historic progress from the perspective of human rights protection.

Third, and more importantly, the abolition of death penalty in cultural heritage related crimes would facilitate international judicial cooperation in combating the crimes against cultural property. As the capital punishment is a major hurdle to extradition recognized by international law and national laws of many states, abolishing it, apparently, removes a legal obstacle when the Chinese government requests the relevant foreign authorities to extradite the alleged offenders of cultural property related crimes (Huo 2013b, p. 163).

International conventions

In a globalized world, no state can prevent the crimes against cultural heritage by itself, thus the international community has made continuous efforts to draft international conventions and to enhance international cooperation. As far as China is concerned, it has ratified four multilateral conventions with regard to cultural property protection, which includes the Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the 1970 Convention), the Convention on Stolen or Illegally Exported Cultural Objects (the 1995 Convention), and the Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1954 Hague Convention) plus its First Protocol.⁶

In addition to joining multilateral conventions of heritage protection, China has sought to sign bilateral agreements with foreign countries. By the end of February 2014, China has signed bilateral agreements on the protection of cultural property from theft, illegal excavation and illicit traffic with 28 countries.⁷ There are two points, *inter alia*, which are worthy of special notice: First, these countries include not only source nations, such as Greece and Peru, but also market nations, such as Switzerland and Australia; Second, most of these countries are the contracting parties to the 1970 Convention (Huo 2013a, p. 25). It should be emphasised particularly that following a request by the Chinese authorities under the 1970 Convention, China and the United States entered into a bilateral agreement in January 2009, imposing import restrictions on certain archaeological material from China.⁸ Under Article IV, the agreement shall remain in force for a period of five years

which can be extended. In January 2014, the two Governments agreed that the agreement shall be extended for additional five years (As of 17 January 2014, the US Department of State listed on its website). The significance of this agreement cannot be overstated insofar as the United States is believed to be the destination of estimated half of all Chinese cultural objects sold worldwide (Gruber 2013).

Needles to say, these conventions are instrumental in enhancing the protection of China's cultural heritage. However, their practical effect is rather limited. There are, basically, two reasons for this unsatisfactory situation: one is the intrinsic flaws of the international instruments per se, the other is the problems of the Chinese system.

The first reason is self-evident: the existing international legal regime is still too weak to safeguard the cultural heritage of humankind. For example, notwithstanding the achievements made by the 1970 Convention, its flaws are fatal, which have been fully revealed after the implementation for more than four decades (O'Keffe 2007). The international community has realized that the purpose of the Convention cannot be fully realised unless it is fundamentally reformed (Prott 2011). Another example, while the 1995 Convention presents a marked improvement over the 1970 Convention, it has been ratified by only thirty-six countries by August 2014, most of which are source nations. As long as major market nations refuse to ratify it, there is little hope that the Convention can fulfill its aim.

The second reason is more complicated. Though China has the obligation to reform its domestic legal regime to implement the international instruments that it has concluded or acceded to, it has not duly performed its commitment. It should be noted that the Constitution of the PRC does not provide an approach to solving the conflicts between Chinese domestic law and the international treaties to which China is a party. What we can find is an article contained in the GPCL which provides that in the aspect of civil law (private law), international treaty stipulations prevail over Chinese domestic law when in conflict. Given that the 1995 Convention basically falls within the scope of private law, the author submits that it should prevail over Chinese domestic law in case of conflict; however, if the rest international treaties are in conflict with Chinese domestic law, it is unlikely that the former would prevail (Huo 2013b, p. 167).

Indeed, the current Chinese domestic law does not square with these international instruments in various aspects, which can be illustrated by the example of the 1970 Convention. Pursuant to the Convention, the State Parties should prohibit and prevent not only the illicit export of cultural property, but also the illicit import of such property. Article 8, in particular, requires the States Parties to impose penalties or administrative sanctions on any person responsible for the illicit export as well as the illicit import of cultural property. The rationale of the Convention is clear: import and export are the two ends of illicit transnational trade of cultural property. Hence, imposing control on but one end will not work.

Nevertheless, the current Cultural Objects Law of China, as analysed above, establishes control on export only, while keeps the door wide open to import. Consequently, those who are responsible for the illicit import of cultural objects are not subject to the administrative sanctions. Similarly, China's Criminal Code penalises the smuggling of exit-prohibited valuable cultural objects, ignoring the act of illicit import of cultural property. Though source nations usually pay more attention to the export control over cultural property, the complete lack of control over the import may have gone too far. It should be stressed that China is not merely a

source nation any longer. With the rapid increase of the import of cultural property since the 1990s, China has now grown into the world's second largest market state (Lee 2012). Against such a historical background, the author argues that current Chinese domestic law is need of immediate reform.

Moreover, under Article 12 and Article 22 of the 1970 Convention, the State Parties should take appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property within all territories for the international relations of which they are responsible; however, the Chinese central government has hitherto made little progress in cooperating with the authorities in Hong Kong and Macao to curb the illicit trade of cultural property which is largely due to the 'One Country, Two Systems' Policy (Huo 2015, p. 213).

Though Hong Kong and Macao became part of China in 1997 and 1999 respectively, the two territories possess the status of 'Special Administrative Regions' which exercise a high degree of autonomy in every area except two: foreign affairs and national defence. Within such a setting, the 1970 Convention is not applicable either in Hong Kong or in Macao. Unfortunately, most illegally exported cultural objects from Mainland China are believed to be smuggled over the border with Hong Kong and Macao. Hong Kong, especially, has been the main transit place for Chinese antiquities for decades (Murphy 1995b, p. 242). For this reason, the bilateral agreement between China and the US emphasises that the Chinese central Government shall make every effort to stop archaeological material looted or stolen from Mainland from entering Hong Kong and Macao.

Law enforcement in China

Since the 1980s, the Chinese government has made consistent efforts to strengthen the law enforcement mechanism to protect its cultural heritage. Nevertheless, cultural heritage in China has not been protected in a timely and effective manner yet. As noted earlier, cultural objects smuggling still thrives in China, some observers even believe that antiquities are the largest single class of item smuggled out of the PRC, at least in terms of monetary value (Murphy 1995b, p. 242). Furthermore, urban expansion and large-scale infrastructure projects in China have destroyed thousands of sites with cultural value and threaten many more. Therefore, this section examines the law enforcement mechanism for heritage protection with the purpose of revealing its flaws.

Institutional framework for heritage management

Under the current Cultural Objects Law, SACH is the national-level administrative agency for cultural heritage protection, local Cultural Heritage Bureaus under local people's governments at or above the county level are local administrative agencies for cultural heritage protection within their own administrative areas. Points worth noting are the following:

First, as mentioned above, prior to the 2002 amendment, it was the MOC, instead of the SACH, that was in charge of cultural heritage protection at the national level. This is because when the Cultural Objects Law was first enacted in 1982, the national agency in charge of cultural property protection is the 'Cultural Heritage Enterprises Management Bureau' of the MOC. In other words, a department within the MOC is responsible for heritage protection nationwide. Therefore,

the Law provided that the MOC was the national administrative agency for cultural heritage protection.

Given cultural heritage protection was facing greater challenges and difficulties in the late 1980s, the Chinese leaders deemed it necessary to promote the status of agencies of cultural heritage protection by upgrading them to independent departments from cultural administrative agencies. Hence, the State Council established the SACH as the encompassing agency for protection of Chinese culture heritage under its jurisdiction to replace the Cultural Heritage Enterprises Management of the MOC in 1988 (As of 17 March 2003, the Xinhua News Agency listed on its website). Since then, the SACH has gained an independent status from the MOC. Though SACH chief usually holds the position of vice cultural minister concurrently, the two agencies perform their functions independently. Now, there exists a principle with regard to the allocation of authority between the SACH and MOC: the SACH is responsible for protection of tangible cultural heritage, and the MOC intangible cultural heritage.⁹ In this light, the change in language made by Article 8 of the Amendment of 2002 reveals a remarkable reshuffle of the Chinese governmental system of heritage protection.

Second, the administrative system of cultural heritage is characterised by a high degree of decentralisation (Zan and Baraldi 2012). Under the Cultural Objects Law, cultural objects of different categories are subject to different levels of protection. The SACH, as the national agency of cultural heritage protection, is directly responsible only for the immovable cultural relics that have been categorised as those under the State protection and the movable cultural objects as ‘valuable grade-one’ ones; local governments at different levels are responsible for the rest immovable and movable cultural objects depending on their respective value or grade. Such an arrangement means that the protection of the overwhelming majority of cultural objects in China is left to local governments.

Third, institutional fragmentation is another striking feature of the administrative system of cultural heritage in China (Zan and Baraldi 2012). Though Paragraphs One and Two of Article 8 of the Cultural Objects Law provide that cultural heritage agencies both at national and local levels are the departments for management and protection of cultural heritage, Paragraph Three of this Article states that administrative departments other than cultural heritage agencies are ‘responsible for the relevant cultural heritage protection work’ within their respective jurisdictions. Hence, under the Law, public security agencies are responsible for imposing punishments for violations of the Law that constitute violations of public security rules; Customs are responsible for the import-export control of cultural property and may punish people for violations of the Law that constitute customs violation (but not smuggling to a criminal extent); Agencies in charge of commercial and industrial activities are responsible for the monitoring and management of antiquity market, and may punish persons engage in commercial activity of antiquities without the necessary permission, or they may punish legally established stores or auction houses for violations of their relevant operational rules. The administrative authorities of urban and rural construction planning agencies and environmental agencies that fall within their functional realms have also been spelled out by the Law. Given that inter-bureaucratism may be produced by the institutional fragmentation, Paragraph Three of Article 9 stresses that all relevant administrative agencies shall conscientiously perform their responsibilities for cultural heritage protection and management.

Law enforcement problems

Based on the examination of the institutional framework for heritage protection, one can easily find that the Chinese government has elevated the status of cultural heritage agencies by upgrading them to independent departments under the governments at the corresponding level for the purpose of strengthening heritage protection; meanwhile the current administrative system is characterised by a high degree decentralization and institutional fragmentation.

Though such a decentralised and fragmentary administrative system is hardly unique to China, it has produced severe law enforcement problems within the context of the unique legal, political and social situation in China.

First of all, the bias toward GDP growth in the evaluation and rewards system of local government officials leads to the lack of respect for the laws regarding cultural heritage protection. Under the current political system of China, officials are not democratically elected; instead, the Communist Party of China (CPC) is responsible for the selection of officials to all governmental organs following the principle of leadership of cadres by the CPC (Lin 2000, p. 92). Since the economic reform, the CPC has established a performance assessment system to appraise local leaders. One of the striking feature of the system is the excessive weight given to GDP growth in performance evaluation, with a few exceptions involving policy areas like family planning and social order (Burns and Zhou 2010). In other words, economic growth is the key criterion to evaluate the performance of a local official which would determine his/her political life. Within such a setting, it is natural that local governments generally show special leniency when enterprises damage, or even destroy, cultural heritage to make way for commercial construction. Indeed, it is not uncommon that local governments set up 'umbrella' schemes, prohibiting heritage protection officials to inspect and impose penalties on enterprises which are significant violators but are considered important to the local economy.

The demolition of home of a revered architect in Beijing may serve as a paradigm of the problem. In January 2012, a State-owned developer demolished the former residence of Sicheng Liang, the father of modern Chinese architecture with the acquiescence of Beijing Municipal Government in spite of the public anger (As of 8 February 2003, the NPR listed on its website). Though the residence was declared as cultural heritage of great historic significance by the SACH in 2009, Beijing Municipal Government chose to sacrifice it for economic interests. As a cultural relics protection activists lamented, Liang made such a great contribution to the protection of Chinese ancient buildings, if his home can be torn down, then developers can do the same thing to hundreds of other ancient houses in the country (As of 10 February 2002, the Global Heritage Found listed on its website).

Second, under the current fiscal system, local governments acquiring responsibilities without necessary means and will to fulfil them. As noted earlier, the Cultural Objects Law requires local governments to incorporate the undertaking of the protection of cultural heritage into their economic developments plans and to provide for them out of the local budget. In economic terms, this means that most of the expenditures on heritage protection should be provided for by local governments. However, under the current central-local fiscal relations, local governments, county governments in particular, lack adequate revenues to finance the wide range of public goods and services, including heritage protection, they are mandated by law to provide (Whiting 2007). This is highly problematic, as all counter-measures

against the crimes against cultural heritage depend heavily on the effective implementation of law by local authorities. When local authorities have not adequate resources to implement law, effective protection is impossible. Moreover, this fiscal gap exacerbates the practices of sacrificing cultural heritage at the alter of economic development by local officials who are strapped for funds and are being told to come up with creative ways to earn their own incomes (Newell 2008, p. 14). In this light, it is easy to understand why the motives to ignore heritage protection provisions that could slow down economic development are so strong among local Chinese officials, especially those in remote and poor regions.

Third, under the decentralised administrative system, local Cultural Heritage Bureaus are subordinate to local governments at the corresponding level. Thus the ability of local Bureaus to preserve cultural heritage may clash with other local interests and therefore be reduced. As a foreign scholar notes, quite correctly, if the Major is involved in urban development projects that could damage heritage, the director of the Cultural Heritage Bureau has little power to resist his 'boss'. This scholar goes on to point out that it is a totally different situation compared to Italy where the heritage preservation at the local level is given to peripheral branches of the Ministry, which report directly to the central government, rather than the local administration (Zan and Baraldi 2012). For this reason, though the status of locus Cultural Heritage Bureaus has been promoted by being given a status of independent governmental departments, the practical effect remains negligible under the highly decentralised administrative system.

Fourth, the institutional fragmentation hampers efficient law enforcement. Though the Cultural Objects Law instruct all relevant administrative agencies to conscientiously perform their responsibilities, conflicts emerge quite often when different administrative agencies have overlapping interests in specific sites (Zan and Baraldi 2012). In fact, one of the major flaws of the Chinese administrative system of heritage protection is that the authorities and functions of respective government departments are not clearly defined or neatly demarcated. For example, as noted above, the SACH is responsible for conservation of tangible cultural heritage, including the management of museums, and the MOC is in charge of intangible cultural heritage; however, the MOC administers a number of national museums, e.g. The Palace Museum (the Forbidden City), the National Museum of China. The allocation of authority between the SACH and other relevant departments are more murky, such as the Ministry of Land and Resources, the Ministry of Environmental Protection, the Ministry of Housing and Urban-Rural Development, the National the State Administration of Tourism, the State Administration of Industry and Commerce, the State Administration for Religious Affairs, etc. Because multiple government agencies have overlapping authorities, efficient enforcement is highly problematic as a consequence. The situation is as the Chinese say, 'nine dragons in charge of water.'

Last, but not least, the intrinsic flaws of the current Chinese legislation on cultural property protection hinder enforcement. As analysed in Part 2, China's legal regime for regulating culture property is a well-intentioned, but ultimately vague and confused effort. The vagueness and lack of specific standards for the grading system is a major problem, as well as the split jurisdiction as to which level of government is responsible for protecting differently graded cultural property (Dutra 2004, p. 93). The definitional ambiguities in the Cultural Objects Law also contribute to the difficulty of applying the Criminal Code in a consistent manner.

Furthermore, definitional vagueness embodied in the existing statutes invites corruption and dereliction of duty by law enforcers, as Shan, the former SACH Chief, complains helplessly that many local officials, who are supposed to enforce the Law, lead the way in breaking it (Newell 2008, p. 56).

Conclusion

The Chinese government has attached great importance to the preservation and protection of cultural heritage since the end of the Cultural Revolution and, has made consistent efforts to establish and improve the legal regime for cultural heritage protection. Nevertheless, many of the heritage protection provision embodied by law are declarative and unrealistic, and the law enforcement mechanism is far from being effective and efficient. According to statistics from the latest national archaeological survey conducted from 2007 to 2011, in the past 30 years, more than 40,000 unmovable relics have vanished, with half of them destroyed by construction work (As of 11 November 2011, the China Daily listed on its website). The legacy of Chinese civilization is clearly at risk, and the challenge to make Chinese history alive is still enormous. Further efforts have to be made in order to effectively protect Chinese cultural heritage; otherwise, China may risk losing a vast portion of its past.

From the perspective of legislation, China has to improve and reform its domestic legal regime for cultural heritage protection. First, Chinese legislature should amend and revise the relevant law, the Cultural Objects Law, and the Criminal Code, in particular, to rectify the blatant shortcomings of the existing statutes, as analysed by the article. Second, China should reform its domestic law to implement the international instruments that it has concluded or acceded to. This is not only a domestic duty, but also an international commitment.

From the perspective of law enforcement, China should reform the administrative system to overcome the obstacles to efficient protection of cultural heritage. Compared with the efforts of improving legislation, this task is far more difficult and complicated, as its success depends on comprehensive reform, including political, economic and social reforms. As the new generation of Chinese leadership pledged solemnly to deepen reforms comprehensively at the third Plenary Session of the 18th CPC Central Committee in November 2013, and has issued detailed reform map (As of 15 November 2013, the Xinhua News Agency listed on its website), one can only hope that their policy will be implemented as planned. In this respect, the reform of China's administrative system of heritage protection is significant not only in that it concerns the safety of China's cultural treasures, but also in that it provides an acute angle from which one can assesses the practical implementation of the ambitious reform plan of China's new leaders in the next decade.

Notes

1. In many conventions and laws, as in many books and papers, the term 'cultural property' is used. In the context of Chinese law, the terms 'cultural objects' and 'cultural relics' are used more often. Strictly speaking, these terms do not all mean the same thing. However, it is beyond scope of the article to provide a theoretic discussion of these terms. They are used more or less alternatively in this article. One point worth

noting is that cultural heritage refers to tangible cultural heritage for the purpose of this article. Protection of intangible cultural heritage, important though it is, is a separate issue (Greenfield 2007).

2. To be more specific, the amendment in 1991 was to revise Article 30 and Article 31 of the Law; the amendment in 2002 was a substantive reshaping of the Law, the amendment in 2007 was to revise Article 22, Article 23, and Article 40 of the Law and, the amendment in 2013 was to revise Article 25(2) and Article 65(2) (see Huo 2013a, p. 257).
3. The 2002 Amendment does not in fact mention SACH by name. It instead uses the terms ‘cultural objects administrative agency’ of the State Council. But under the current organisation of the State Council, this effectively refers to SACH. Similarly, the 1982 Law does not mention the MOC directly. Instead, it uses the term ‘cultural administrative agency’ of the State Council. The reason for this change and the relationship between SACH and the MOC will be analysed in detail later.
4. The GPCL was adopted at the 4th Session of the Sixth National People’s Congress on 12 April 1986, coming into force on 1 January 1987.
5. The Property Law was adopted at the Fifth Session of the Tenth National People’s Congress on 16 March 2007, coming into force on 1 October 2007.
6. China, so far, has not accepted the Second Protocol of the 1954 Hague Convention, neither has it ratified the Convention on the Protection of Underwater Culture Heritage. The major reason for China’s refusal to accept the Second Protocol of the 1954 Hague Convention is that the Criminal Code of the PRC cannot satisfy its requirements because it lacks the provisions that regulate the crimes against cultural heritage in armed conflict. As China has various territorial disputes in the Yellow Sea (with North Korea and South Korea), the East China Sea (with Japan) and the South China Sea (with Vietnam, the Philippines, Malaysia, and Brunei), it worries that the accession to the Convention on the Protection of Underwater Culture Heritage may be against its national interest (Huo 2013b, p. 167).
7. The information comes from the interview of 28 February 2014. I would like to thank Yucai Gu, Vice-chief of the SACH for his generously sharing his knowledge and information with me for this article.
8. These import restrictions apply to all undocumented artefacts from the Paleolithic Period to the end of the Tang Dynasty.
9. The situation is similar at local level: since the later 1980s, local Cultural Heritage Bureaus have generally obtained the status of departments under the jurisdiction of local governments, instead of local cultural departments, at the corresponding level.

References

- Beijing developers demolish home of China’s father of modern architecture.* Available from: http://globalheritagefund.org/onthewire/blog/beijing_developers [Accessed 15 January 2015].
- Burns, John P. and Zhou, Zhiren, 2010. Performance management in the government of the People’s Republic of China: accountability and control in the implementation of public policy. *ECD journal on budgeting*, 10 (2), 7–34. Available from: <http://www.oecd.org/china/48169592.pdf> [Accessed 15 January 2015].
- China’s demolition derby turns history into rubble.* Available from: <http://www.npr.org/2012/02/08/146578746/home-of-noted-beijing-architect-reduced-to-rubble> [Accessed 15 January 2015].
- China issues detailed reform roadmap.* Available from: http://news.xinhuanet.com/english/china/2013-11/15/c_132891922.htm [Accessed 23 February 2015].
- Cultural property agreement with the U.S.* Available from: <http://eca.state.gov/cultural-heritage-center/international-cultural-property-protection/bilateral-agreements/china> [Accessed 23 February 2015].
- Cuno, James, 2008. *Who owns antiquity? Museums and the battle over our ancient heritage.* Princeton: Princeton University Press.

- Dutra, Michael L., 2004. Sir, how much is that ming vase in the window? Protecting cultural relics in the People's Republic of China. *Asian-Pacific law & policy journal*, 5 (1), 62–100.
- Gao, Mingxuan and Ma, Kechang, eds., 2000. *Xingfa Xue* [Criminal law]. Beijing: Peking University Press.
- Greenfield, Jeanette, 2007. *The return of cultural treasures*. Cambridge: Cambridge University Press.
- Gruber, Stefan, 2007. Protecting China's cultural heritage sites in times of rapid change: current developments, practice and law. *Asia Pacific journal of environmental law*, 10 (3), 253–301.
- Gruber, Stefan, 2013. The fight against the illicit trade in Asian cultural artefacts: connecting domestic strategies, regional cooperation and international agreements. *Asian journal of international law*, 3 (2), 341–363.
- Huo, Zhengxin, 2013a. *Zhuisuo Haiwai Liushi Wenwu de Falv Wenti* [The restitution of Chinese cultural objects lost overseas]. Beijing: China University of Political Science and Law Press.
- Huo, Zhengxin, 2013b. Protracted war: the fight against illicit traffic of cultural property in China. In: Jorge Sánchez Cordero, ed. *The 1970 convention: new challenges*, Mexican City: Mexican National University Press, 151–174.
- Huo, Zhengxin, 2015. *1970 UNESCO Gongyue yanjiu: Wenben Shishi yu Gaige* [The UNESCO convention: text, implementation and reform]. Beijing: China University Of Political Science and Law Press.
- Improved law urged on cultural relics protection*. Available from: http://www.chinadaily.com.cn/china/2012-11/19/content_15941366.htm [Accessed 23 February 2015].
- Lau, Timothy, 2011. The grading of cultural relics in Chinese law. *International journal of cultural property*, 18 (1), 1–35.
- Lee, Keun-Gwan, 2012. An overview of the implementation of the 1970 convention in East Asia. Paper presented at the Second Meeting the States Parties to the 1970 Convention, Paris, UNESCO Headquarters, 20–21 June.
- Lin, Feng, 2000. *Constitutional law in China*. Hong Kong: Sweet & Maxwell Asia.
- Ma, Junju and Yu, Yanman, 2011. *Minfa Yuanlun* [A theory of civil law]. Beijing: China Law Press.
- Murphy, J. David, 1995a. *Plunder and preservation: cultural property law and practice in the People's Republic of China*. New York: Oxford University Press.
- Murphy, J. David, 1995b. Hong Kong, 1997, and the international movement of antiquities. *International journal of cultural property*, 4 (2), 241–254.
- Newell, Phillip, 2008. The PRC's law for the protection of cultural relics. *Art, antiquity and law*, 13 (1), 1–58.
- O'Keffe, Patrick J., 2007. *Commentary on the UNESCO 1970 convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property*. Leicester: The Institute of Art and Law.
- Prott, Lyndel V., 2011. Strengths and weaknesses of the 1970 convention: an evaluation 40 years after its adoption. Paper presented at the Meeting of The 1970 Convention: Past and Future, Paris, UNESCO Headquarters, 15–16 March.
- Schmidt, Anne Carliele, 2000. The Confuciusornis sanctus: an examination of Chinese cultural property law and policy in action. *Boston college international & comparative law review*, 23 (2), 185–227.
- Taylor, Jason M., 2006. The rape and return of China's cultural property: how can bilateral agreement stem the bleeding of China's heritage in a flawed system? *Loyola U. Chicago international law review*, 3 (2), 233–256.
- Whiting, Susan H., 2007. Central-local relations in China. *China policy series*, XXII, 1–44. Available from: [http://www.ncusr.org/files/8.%20Central%20Local%20Fiscal%20Relations%20\(22\).pdf](http://www.ncusr.org/files/8.%20Central%20Local%20Fiscal%20Relations%20(22).pdf) [Accessed 15 January 2015].
- Wenwuju Lishi Yangde yu Zhineng* [The Historic Development of the State Administration of Cultural Heritage and its Functions], Available from: http://news.xinhuanet.com/zhengfu/2003-03/17/content_782809.htm [Accessed 15 January 2015].
- Xingfa Xiuzhengan Quxiao Shisange Sixing Zuimin* [The amendment to the criminal code reduced the number of capital crimes]. Available from: http://news.xinhuanet.com/legal/2010-08/23/c_12473736.htm [Accessed 15 January 2015].

Yunnan Huozai Liuming Zeren ren bei chuli [Six people found guilty in the fire of Yunnan]. Available from: <http://www.caixin.com/2015-01-16/100774978.html> [Accessed 15 January 2015].

Zan, Luca and Baraldi, Sara Bonini, 2012. Manging cultural heritage in China, a view from the outside. *The China quartely*, 210, 456–481.