

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

Yuetong Liu

*School of Languages and Communication Studies, Beijing Jiaotong University, Beijing, China
lyt030107@outlook.com*

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

Keywords: cultural relic repatriation, international treaties, legal enforcement

1. Introduction

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

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

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

2. Current status of Chinese cultural relic loss

According to the statistics of the Chinese Society of Cultural Relics, more than 10 million Chinese cultural relics have been lost overseas due to war plunder, illegal trade and colonial expropriation [1]. Among them, there are more than 1 million national first- and second-class cultural relics with clear historical and chronological value. In addition, UNESCO data shows that about 1.64 million Chinese cultural relics are collected in more than 200 museums in 47 countries. At the same time, it is estimated that the number of Chinese cultural relics in the international private collection is almost ten times that of museum collections, reaching about 20 million pieces. This large amount highlights the seriousness of the loss of cultural relics in China and the imbalance between supply and demand in the international cultural relics return mechanism.

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

3. Current international treaty system and evaluation

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

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

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

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

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

The Convention establishes a three-level protection mechanism: the preventive mechanism requires States parties to implement an export license system for cultural property; the return mechanism stipulates that illegally exported cultural property must be returned to the country of production; and the International Cooperation Mechanism authorizes UNESCO to establish an expert committee to assist in processing compensation claims. In addition, the Convention provides dual remedies, including judicial and diplomatic remedies. Although the number of States parties had increased to 143, the effectiveness of the Convention was still limited by differences in national legal systems, which complicated the implementation of the Convention. To address those limitations, the international community subsequently formulated the *1995 Convention*, aimed at providing a more comprehensive legal framework for the return of cultural property.

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

The Convention Concerning the Protection of the World Cultural and Natural Heritage (hereinafter referred to as the *1972 Convention*) is the first international treaty to grant equal protection to cultural and natural heritage. Its core principle is “outstanding universal value”, which challenges the traditional concept of national sovereignty by defining certain heritages as “the common wealth of all mankind” and imposing transnational protection obligations on the parties. The Convention establishes a system for the *World Heritage List* and promotes international cooperation and the protection of cross-border heritage through the establishment of a World Heritage Fund and a technical assistance mechanism.

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

The Convention on Stolen or Illegally Exported Cultural Objects (hereinafter referred to as the *1995 Convention*) has five chapters and 21 articles, which apply to the return of stolen or illegally exported cultural relics. It introduces the principle of strict responsibility and the inversion of the burden of proof, which greatly strengthens the protection of the cultural property rights of the country of origin. Under this framework, a claim for compensation can be filed without proving that the buyer “knows or should know” the illegal source of the cultural relic. The Convention also establishes a mechanism for the return of stolen cultural property and provides for the right of the real owner to reasonable compensation, thus balancing legal protection and market interests. In terms of enforcement, it provides legal channels, such as court rulings, to facilitate claims. A famous example is the Zhang Gong Buddha, one of which was illegally transported from China and later found in the Netherlands. Although the Netherlands has not yet ratified the *1995 Convention*, its principles still have a potential impact on disputes over the return of cultural relics.

4. Institutional deficiencies in the application of international treaties

4.1. Temporal limitations: the problem of non-retroactivity

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

4.2. Spatial fragmentation: the asymmetry of treaty participation

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

4.3. Judicial redress ineffectiveness: procedural barriers in cross-border litigation

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

5. Solutions to the dilemmas of international treaty application

5.1. Enhancing the applicability of international conventions

Under the framework of international law, enhancing the applicability of the Convention on the Return of Cultural Relics is the key to improving the success rate of the return of cultural relics. First, the application of international conventions should be authorized by national constitutions or fundamental law to ensure the legality and authority of the application of treaties. The treaty could set out specific conditions for its application and provide the option of direct adoption or conversion of domestic law, depending on the case at hand. This approach would ensure the maximum effectiveness of treaties without compromising the integrity of national sovereignty or the domestic legal system [3]. In addition, supplementary provisions on the applicability of international conventions should be included, specifying whether treaties are directly applicable or require legislative action to be applied indirectly. Clearer and more specific rules should be formulated for

the definition of cultural relics, return procedures, evidence standards, etc. to reduce the ambiguity of interpretation. This will enhance the ease and consistency of the application of the treaty.

In view of the restrictions brought about by the narrow scope of binding on the treaty, it is particularly important to improve the law enforcement measures related to the return of cultural relics. It is an effective way to optimize the import standards of cultural relics. The establishment of a stricter inspection mechanism for the import of cultural relics is a prerequisite for the return of cultural relics, but excessive restrictions may hinder international cultural exchanges. Therefore, a balance must be struck between the protection of cultural relics and the promotion of cultural dialogue. This will involve combating the trafficking of illegal cultural relics while still allowing legal cultural exchanges.

Strengthening international cooperation and coordination is crucial. Countries should strive to reach consensus on import control standards and establish a global cultural relics supervision network. This helps to fill the loopholes in combating the smuggling of cultural relics and provide a stronger legal basis and law enforcement guarantee for the return of cultural relics.

5.2. Strengthening enforcement and international legal assistance

China should further strengthen cooperation with relevant countries, strive to conclude bilateral or multilateral agreements, and reach a consensus on jointly combating the smuggling of cultural relics. By signing bilateral or multilateral agreements, the rights and obligations of all parties can be clarified, and the legal basis and operating platform can be provided for compensation. These agreements should not only cover core elements such as the definition of cultural relics, return procedures and evidence standards, but also include enforcement mechanisms and dispute resolution methods to ensure practicality and binding. For example, China's cooperation with Egypt, Greece and other countries affected by the loss of cultural relics has not only won the sympathy of the international community for the return of Chinese cultural relics, but also strengthened the support and cooperation of the international community [4]. This cooperation model is conducive to building global consensus and promoting the return of lost cultural relics.

Strengthen coordination and communication with relevant international organizations, and give full play to their advantages in international public opinion, information sharing, technical support and other aspects. As an important international institution, The United Nations Educational, Scientific and Cultural Organization (UNESCO) plays an indispensable role in the restoration of cultural relics. When there is a dispute between China and other countries in the return of cultural relics, the support of UNESCO can greatly improve the efficiency of diplomatic negotiations while avoiding the contradiction between legal certainty and flexibility. In addition, Interpol has played a key role in global efforts to recover stolen artifacts and works of art. China should make full use of the resources and coordination of these international organizations to promote the return of lost cultural relics.

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

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

5.3. Establishing a unified international legal framework

As the original owner of many cultural relics, China should take a more proactive attitude in the international arena and strengthen communication and cooperation with countries and international organizations in the cultural relics market. This is very important to promote the return of overseas cultural relics. By actively participating in the formulation and revision of international conventions, China can promote the establishment of a more just and reasonable mechanism for the return of cultural relics [5]. This work needs to explore new international consensus on the basis of existing conventions, such as the *1970 Convention*, and revise provisions that are not conducive to the interests of the countries of origin of cultural relics. In addition, China should advocate the formulation of new international treaties to better adapt to the current situation of the cross-border movement of cultural relics. The establishment of a unified international legal framework will provide more coherent and effective governance of the cultural relics return process, ensure that the interests of cultural heritage are protected globally, while balancing the rights of market countries and moral obligations to countries of origin of cultural relics.

6. Conclusion

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

Funding support

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

References

- [1] Li Yuche, Chen Qian. Cultural Relics Restitution Requires Greater Cooperation [N]. *Global Times*, April 22, 2024 (013). DOI: 10.28378/n.cnki.nhqsb.2024.002438.
- [2] See 1995 Convention Contracting States, available at: <<https://www.unidroit.org/instruments/cultural-property/1995-convention/status/>> (accessed March 4, 2025).
- [3] See Evelien Campfens, "Whose Cultural Objects? Introducing Heritage Title for Cross-Border Cultural Property Claims," 67 *Netherlands International Law Review* 257 (2020).
- [4] Fan Tianzhen. *The Repatriation of Lost Cultural Relics from an International Law Perspective* [D]. China Foreign Affairs University, 2012.
- [5] Huo Zhengxin, Chen Ruida. Jurisprudential Reflections on the Repatriation of Lost Cultural Relics from the Perspective of Cultural Sovereignty: An Analysis Based on Lost Artifacts from Grotto Temples [J]. *Academic Monthly*, 2022, 54(01): 112-126. DOI: 10.19862/j.cnki.xsyk.000346.