The Return of Chinese Cultural Treasures Taken From the Second Opium War (1856-1860)

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Abstract. This paper focuses on the return of Chinese cultural treasures taken out of the country from the Second Opium War (1856-1860). Following the decay of the Qing government and the defeat in the First Opium War, China was forced to open its borders and was dragged into a series of wars. During the Second Opium War, a large number of cultural treasures were taken out of the country, which was represented by the Looting of the Summer Palace. The Chinese government continues to seek the return of its cultural treasures in accordance with international conventions and Chinese law. This paper begins with the historical background to the loss of its cultural treasures. This paper will then examine how international law has developed for the return of cultural treasures taken during armed conflicts. This paper will also discuss the current possible solutions for recovery and their drawbacks.

Keywords: Return, Chinese Cultural Treasures, Second Opium War, International Law.

1. Introduction

On April 26th, 2013, the French Pinault Family announced that they would donate two $40 million bronze statues that were taken from Beijing’s Summer Palace by Anglo-French troops during the First Opium War (1856-1860) to China. These two bronze statues, as a part of the twelve Chinese Zodiacs from the Summer Palace, represent the splendid aesthetic achievements of bronze statuary from the Qing Dynasty.

This donation of two bronze statues enjoyed a warm welcome in China, but also reminded the Chinese people of the auction of the same two bronze sculptures four years earlier. In 2009 when the same two sculptures were sold at auction as part of the art collection of the French fashion designer Yves Saint Laurent and his partner Pierre Berge. The Chinese State Administration of Cultural Heritage resolutely urged Christie’s to stop the sale, stating that “the auction would bring repercussions as it had harmed the cultural rights and national feeling of the Chinese people”. A group of 81 Chinese lawyers and three foreign lawyers organized a campaign to block the sale in the French court.

The plaintiff, the Association for the Protection of Chinese Art in Europe (APACE), filed a motion at the Tribunal de Grande Instance in Paris to seek an injunction to stop the auction. The plaintiff argued that the two bronze statues were irreplaceable pieces of Chinese cultural treasures possessing significant historic and artistic values. The plaintiff argued further that once the two sculptures were sold at auction, they would be held by private art dealer, which would cause irreparable damages to the Chinese people’s access to its culture and history, and in addition to the world’s cultural treasures.

However, the French court ruled against the plaintiff concluding that “the APACE was not qualified plaintiff to file the motion because it did not have direct links with the two bronze sculptures”. The two bronze sculptures were eventually purchased by a Chinese businessman, but the deal was not ultimately concluded. After the auction sale in 2009, China announced new limits against Christie’s. Specifically, the Chinese government tightened the ownership control over all cultural relics that Christie’s seeks to import or export.

The dispute arising out of the auction sale in Paris was just one issue among the countless Chinese cultural treasures that have been taken out of country during the Second Opium War (1856-1860).

2. The Importance of Cultural Treasures

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Cultural treasures are generally described as a collection of objects of historical, artistic, or scientific value which are considered as being the material evidence of its civilization\(^8\). As a reflection of a society’s beliefs, religions, ideologies, and values, cultural treasures represent the wisdom of a people, a group and a nation, which can be expressed through languages, items, behaviors, production and practices\(^9\). Each cultural item is not just a product, but also a connection surviving from a past age and linking to the future, through which descendants can understand their ancestors and enhance their sense of recognition as a unity\(^10\). This sense of belonging passes from generation to generation in the future, which shapes the nature of a people as well as embodies civilization and development\(^11\). From this perspective, cultural treasures are of great value and meaning to a nation.

China has an abundance of cultural artefacts, which have been created by its people through the consistent history of more than 5000 years. However, there were a large number of cultural treasures taken out of the country especially during the Second Opium War, represented by the Looting of the Summer Palace.

Since the Chinese government has realized the value of its cultural treasures which can be used for enhancing national recognition and reconstructing political identity, it has taken positive steps to reclaim its cultural treasures\(^12\). Both the Chinese government and the general public are expecting the return of its scattered cultural treasures. For example, when British Prime Minister David Cameron visited China in December 2013, he was inundated with demands for the return of cultural treasures taken from China\(^13\). When the British officials set up the official page on Chinese social network “Sina Weibo”, China’s version of Twitter, one of the most popular questions has concerned the return of artefacts taken from China. While taking certain positive steps to recover the removed cultural treasures, restitution still remains a problematic issue, as was the case in Paris in 2009 when two bronze statues were for auction.

When seeking to recover its cultural treasures taken by Western countries many years ago, one question China will encounter in every action is whether the removals of cultural treasures during the Second Opium War was legal or illegal. The following section will examine how international law addressed the return of cultural treasures.

3. International Law

Traditionally, no rule prevented the destruction and seizure of an enemy’s property, which means victors were legitimately allowed to take property from the defeated and the destruction or seizure of an enemy’s property was viewed as an inevitable result of war\(^14\). No consideration was given to the protection of cultural treasures during warfare until the sixteenth century when international jurists gradually realized that cultural treasures should be respected and protected during warfare\(^15\).

3.1. The Precedents for the Return

Regarding the historically removed cultural treasures, there were only limited numbers of historical precedents for the return of art treasures to the place from which it was taken. For example, the Treaty of Westphalia contained provisions for the return of cultural treasures taken during the Thirty Years War\(^16\). In 1812, when a ship containing art treasures belonging to the Philadelphia Museum of Art were seized, a Canadian court held that art treasures should be returned, reasoning that “art was part of the common heritage of mankind and, thus, protected from seizure during war”\(^17\). In the case of “the bombardment of Washington”, the attack was strongly criticized by the British Parliament for its endangerment of such cultural sites. At the Congress of Vienna of 1815, the allies insisted that the plundered art treasures taken to the Louvre should be returned, signaling that art plunder as “spoils of war” was no longer tolerated in European society\(^18\). Especially after the Franco-Prussian War, the European world, both scholarly and public, generally agreed that cultural treasures deserved privilege and respect during armed conflicts.

In the 18\(^{th}\) and 19\(^{th}\) century, the concept that cultural treasures belong to all humanity emerged in international law which developed to restrict the plunder of cultural treasures as war booty\(^19\). These early cases laid the groundwork for the incorporation of such principles concerning cultural treasures in practically legal binding rules among states\(^20\).
The first law of war codified to restrain the combats and to preserve cultural treasures is the Lieber Code. The Lieber Code, adopted in the United States in 1863, stated that only public property was susceptible to legal seizure and distinguished cultural treasures from normal war booty for the purposes of confiscation or appropriation. In no way, could churches, museums or institutions of learning "be seized, sold, given away, wantonly destroyed, damaged, or privately appropriated until such time as a peace treaty determined the ultimate ownership of the property."

In accordance with the Lieber Code, the Brussels Declaration of 1884, a non-binding instrument, contained provisions relating to the protection of cultural treasures. The purpose was to reduce the destruction of cultural treasures by taking preventative measures, for example, by the identification and the use of marking signs to indicate privileged buildings. Additionally, the Oxford Manual of 1880, adopted by the Institute of International Law, argued that "the property of institutions devoted to religion, charity, education, art and science, cannot be seized" and "all destruction or wilful damage to ..(the protected buildings) is formally forbidden."

While these legal instruments addressed the protection and respect for cultural treasures during armed conflicts, they cannot be applied to determine the illegality of the removals of Chinese cultural treasures, as the Lieber Code was a domestic instrument passed by the U.S. government, or non-binding effect (the Brussels Declaration was ratified by states and the Oxford Manual was simply a guidance produced by the Institute of International Law).

The only legal instruments China can seek for its application to determine the illegalities of removals during armed conflicts are the Hague Conventions 1899 and 1907. China was one of the signature countries that ratified the Hague Convention of 1899.

3.2. Hague Conventions 1899 and 1907: Prohibiting Looting of Cultural Treasures

The Hague convention of 1907 produced several important breaking thoughts in cultural heritage law. Firstly, it formally forbade the pillage of cultural artefacts. Article 23 (g) stated that destruction or seizure of the enemy’s property was prohibited unless it was militarily necessary. Article 28 forbade the pillage of a town or place, even when taken by assault. Article 47 put a total ban on pillage during the military authority over the territory of the hostile state. Such provisions put an end to the traditional rules on war booty and restricted the rights of a belligerent, but possible booty still remained in the case of public state property as it was not subsumed under the category of cultural treasures.

The second achievement can be concluded as artistic, religious and scientific property was to be immune from attack unless employed for military purposes, represented in Articles 27 and 56. In the cases of sieges and bombardments, Article 27 required all the signatory states to take every possible step to spare buildings dedicated to art, science and religion and historical monuments. The term “to spare” and “as far as possible” made it clear that the damage, either direct injury or avoidable incidental damage, caused to the privileged buildings as an avoidable incident of the bombardment of other targets was unlawful. The suggested measures were giving notice to the enemy by marking these buildings, which must be communicated to the enemy in advance, and avoiding using these privileged buildings and historical monuments for military purposes. However, if the privileged buildings were used for military purposes, then the special protection was forfeited.

Article 56 required states to protect both movable and immovable property belonging to institutions of religious, charitable, educational, historic and artistic character. Article 56 provision was cited in, Menzel v. List, the first American case to consider the ownership of a cultural item looted during the Holocaust. In this case, the court held that Nazi appropriations of cultural treasures during the Second World War had violated the Hague Convention 1907.

The Hague Convention of 1907 not only criminalized acts against religious and cultural treasures during armed conflicts and belligerent occupation, but also explicitly sanctioned prosecution of violators and remedies for victims. In addition, in response to the argument that several of the belligerents in the Second World War were not parties to the Hague Convention and therefore not legally bound, the Nuremberg Tribunal stated that the Hague Convention should be viewed as part of customary international law.
Accordingly, it can be concluded that the looting or pillage of cultural treasures during armed conflicts constitutes a breach of international law which entitles the injured State to seek reparation. Based on a detailed analysis of international law, the conclusion can be drawn that the seizure and destruction of Chinese cultural treasures as war booty after the enforcement of the Hague Conventions 1899 and 1907 were illegal. In other words, China can take legal actions to invoke state responsibility in the breach of international law and was supposed to seek the return of removed cultural treasures taken after 1899 as reparation. However, regarding the cultural treasures taken during the Second Opium War (1856-1860), there was no law applied at that time prohibiting such conducts.

3.3. Current International Conventions do not Cover Historically Removed Cultural Treasures

In an effort to strengthen the laws protecting cultural treasures in the wake of their disastrous failure in World War II, the 1954 Hague Convention and its two protocols obligate belligerents to take preventive measures in both wartime and peacetime to reduce the impacts of armed conflicts on cultural treasures. According to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, belligerents are obliged to avoid targeting cultural treasures and to protect it regardless of its ownership or origin. Also, it requires states to take certain measure to protect their own cultural treasures in advance of war.

After having emerged from occupation, colonization, and turbulent political circumstances, newly independent countries were anxious to recover their important cultural relics as many of which were stored in the museums of former colonizing. Also, newly independent states were concerned at the continuing loss of cultural relics as they did not have enough resources to control it. The purpose of 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is not to stop any interchange of cultural treasures between states completely, for example, exchanges for scientific, cultural or educational purposes. Under the regulation of 1970 UNESCO Convention, only the illicit import, export and illegal transfer of ownership of cultural treasures are the targets. The 1970 UNESCO Convention actually constituted a decisive step in the area of protecting cultural treasures, as it set minimum standards for the adoption of other instruments at a national, regional and international level.

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was an attempt to eliminate the obstacles in the way of the return and to strike a delicate balance between compulsory return and compensation for a bona fide purchaser. Additionally, it tried to reach a compromise between civil law systems which favour bona fide purchasers and common law systems which give priority to original owners of cultural treasures.

Based on the analysis above, while these three primary multilateral treaties deal with destruction, appropriation, theft and illegal exportation of cultural treasures, they do not directly assist China in recovering its lost relics within the existing international legal regimes. Even though China has ratified the 1954 Hague Convention, the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, these three conventions do not cover cultural treasures removed historically and most of the market states that hold Chinese cultural artifacts have not signed the conventions.

4. Possible Solutions for the Return and Their Drawbacks

4.1. Civil Litigation

In seeking the return of cultural treasures through civil litigation, a number of problems arise. The first question China need to solve is proving its ownership over the cultural treasures that were removed. In other words, unless China provides evidence that there were laws existing proving its ownership over the removed items, China does not have rights to claim the returns. China also needs to prove that the cultural treasures were looted or stolen. As the cultural treasures were removed many years ago, there are not many records in existence and witnesses may not survive as time passes. China is required to consider this question because simply claiming “it is known by all” is not enough in court. Further, once the limitation period expires, it is hard to bring the claims before the court for consideration.
4.2. Buying Back and Donation

China has sought for every possible solution recovering the removed cultural treasures overseas. The major method to recover the national treasures is to buy them back. In some cases, private collectors have donated the cultural treasures to the government. The high demand for these cultural treasures has driven prices to an unbelievable high level. Macao entrepreneur Stanley Ho donated 6 million yuan (about 722, 892 U.S. dollars) to buy back a sculpture from a U.S. art collector and then donated it to the Poly Art Museum in Beijing.

Although buying-back is the most feasible way to recover the lost treasures, limited funding is always a problem. The State Administration of Cultural Heritage does not support the efforts of domestic institution and individuals to bid for or purchase any Chinese treasures “that have been plundered, stolen or illegally exported”.

Also, many scholars strongly reject this method to recover the plundered cultural treasures, declaring that these cultural treasures are state property and purchasing them is a “second looting”. Song Xinchao, director of the Museum Department in China's State Administration of Cultural Heritage explained that “to buy them back means we acknowledge they were taken out of our country legally. It will be a compromise to the wrong thing and even an indulgence in crimes”. However, the questions rising out this position are what legal basis can be found to support this argument?

4.3. Diplomatic Negotiations

Another method is diplomatic negotiations between the current possessing countries and China. Diplomatic channels are the most frequent approach that has been employed to recovering cultural treasures. However, several drawbacks should be paid attention to. Firstly, it is quite difficult to recover cultural relics if they were in the hands of individuals rather than State museums, research institutions, universities or other governmental departments. Secondly, there also must be enough evidences to prove China’s ownership and the cultural relics were illegally removed. Thirdly, diplomatic negotiation is closely related with political interests. As the fastest developing economy entity, China plays an important and indispensable role in global economic recovery, political conflicts, and producing industry.

On one hand, taking advantage of these opportunities could be another chance for recovering Chinese cultural treasures which can be best illustrated by the two donated bronze statues from France. Specifically, the friendly offer is largely related to China’s increasing international position and its huge profit market.

Speculations regarding this donation had something to do with the French president, Mr Hollande’s first visit to China. As China has become an increasingly important engine of global growth in recent years, it is necessary for France to strengthen trade relations with China. Especially during the global financial recession, Chinese purchases of Western government debt have helped Western economies, while its consumers are increasingly crucial to many French retails and manufacturers. The more domestic consumer demand is expected to generate growing demand with potential business opportunities to match in the coming years.

While China’s domestic consumer demand is of great significance to France, the Sino-French relations were frequently influenced by political elements. For example, Nicolas Sarkozy, the previous French president, angered both Chinese political elites and general public after he met with the Dalai Lama, the Tibetan spiritual leader, whom Beijing has denounced as a separatist, in 2008. Relations became more tendentious when Western and Tibetan protesters interrupted the Olympic torch relay when it passed through Paris on the way to Beijing. Further, while tensions eased just before France took the presidency of the Group of 20 in 2010, the relations deteriorated again when France criticized China’s reluctance to support the battle against the Libyan dictator. France is under great pressure to remedy the diplomatic relations with China.

On the other hand, the financial motivations that drove the Pinault Family to donate these two bronze statues can be concluded in two aspects. First, the company has significant stakes in China, where some of its fashion brands, like Gucci, are very popular with China's fast-growing high-end shoppers. Second, Pinault Family is the controller of Christie’s which just became the first international auction house to receive a license to operate independently on the Mainland China. Even though Christie’s is still prohibited from...
engaging in auctions of cultural relics, the license granted will bring the Christie’s more profits in other products such as wines and paintings without charging too much in taxes, or customs fees\textsuperscript{54}.

However, diplomatic negotiations cost time. During the process, political interests would be a critical element so that countries have to balance conflicting parties to achieve a situation accepted by all parties.

5. Conclusion

While the international community has put a great deal of efforts into the protection of cultural treasures during the last one hundred years, as most of the current international conventions and regulations do not cover cultural treasures removed historically. There is a gap in the current legal system in providing for the return of cultural treasures. However, the current society has shown its respect for original states’ interests and access to their cultural treasures, which can be reflected in several aspects, for example, current museums’ stricter policy in acquisition, the successful negotiation and cooperation in recovery and also the evolution of cultural heritage law.

In 2002, eighteen main museums signed the Declaration on the Importance and Value of Universal Museums, which opposes returning art works to their original places\textsuperscript{55}. After the scandal surrounding the Getty Museum and other leading U.S. museums that found that they had had acquired scores of valuable art items from Italy and Greece which were of dubious provenance, and added stolen property to their collections, museums have taken stricter policy when buying and accepting cultural treasures\textsuperscript{56}. In 2008, the Association of Art Museum Directors passed a guideline, requiring that museums should not buy or accept artefacts which do not have a documented history stretching back past 1970 or lack an export permit from the country of origin\textsuperscript{57}. According an art dealer’s words, “objects are guilty until proved innocent”. After six years, this changed attitude from museums in market states reflect the fact that they are showing respect to original states and their rights for cultural treasures, rather than just simply ignoring the claims.

Additionally, while the claims for return remained largely unsuccessful in the late twentieth century, it is clear that there has been a change in the early twenty-first century that claims for return have been successfully negotiated\textsuperscript{58}. More cultural treasures restored in the museums outside the origins were returned through different channels. For example, in 2011, the Pergamon Museum agreed to return Turkey a 3000 year old sphinx from the Hittite Empire which had been taken to Germany in 1917\textsuperscript{59}. In January 2009, the FBI returned a collection of more than 100 ancient artefacts to Panama, which included a number of pottery pieces and gold works, jewellery from the pre-Columbian period of 1100-1500\textsuperscript{60}. On April 26th, 2013, the French Pinault Family announced that they would donate two $40 million bronze statues that were taken from Beijing’s Summer Palace by Anglo-French troops during the First Opium War (1856-1860) to the Chinese government\textsuperscript{61}.

Through the examination of cases attempting to recover cultural treasures to original states, this research will conclude the society has gradually recognized the imperative that cultural treasures should first serve the needs of original states. One of the best examples that can illustrate this argument is the attitude held by museums in current possessing states, from publicly opposing the return to original states in 2002 to adopting stricter acquisition policy in 2007, from rejecting the acquisition of cultural treasures with dubious provenance from original states to supporting original states’ claims for recovery. All these changes have indicated that the current society, especially the current possessing states have respected and recognized the imperative that cultural treasures should first serve the needs of original states and should therefore be returned.

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7. References


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P. Gerstenblith, "The Public Interest in the Restitution of Cultural Objects. (Ownership and Protection of Heritage: Cultural Property Rights for the 21st Century)," *Connecticut Journal of International Law*, 2001, vol. 16, 200-201; D. N. Osman, "Occupiers' Title to Cultural Property: Nineteenth-century Removal of Egyptian Artifacts," *Columbia Journal of Transnational Law*, 1999, vol. 37, 974. The notion that cultural objects should belong to all humanity rather than as a prize of plunder, in nature, is intended to prevent destruction and plunder. However, the aspect of internationalism was later used as an excuse for reliance on market-based principles and for the large-scale looting of archaeological sites.


Article 23 (g) of the Hague Convention

Article 28 of the Hague Convention


[47] The efforts to bid for or purchase any Chinese treasures that have been plundered, stolen or illegally exported are not encouraged. Wenwu China (12 November 2010), online: http://www.wenwuchina.com/news/list7/detail37/71320.html


[54] According to Law of the People's Republic of China on the Protection of Cultural Relics, Article 55 reads “The establishment of cultural relic’s stores or auction enterprises engaged in auction of cultural relics in the form of Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or wholly foreign-owned venture is prohibited”.


