

The Problem of International Private Law in the Pursuit of Cultural Relics Overseas

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Abstract: With the rapid development of the economy, people's awareness of the protection of cultural relics gradually increased. As a result, the issue of recursive overseas cultural relics is worthy of our attention. The urgency of recapturing overseas cultural relics has been greatly increased in order to avert the onset of a new era of cultural relics crisis. Faced with the difficulties of recourse, a low success rate, complicated recourse processes, and an immature international situation, what type of effort should we make? The overseas loss of cultural relics as the subject of study, a brief analysis of its research value, and the state of our recourse process, in the process of the challenges faced, and put forward the appropriate measures to address the situation are all covered in this paper. Furthermore, the subject of international private law is discussed.

Keywords: Overseas loss of cultural relics; International private law issues; Cultural heritage; Fight smuggling; International Convention

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1. Introduction

China has made significant contributions to the development of world culture as a country with continuous civilization. In cultural artefacts, the performance is extremely prominent. Cultural relics, on the other hand, confront several challenges due to events such as war and societal unrest. The Eight-Power Allied Forces invaded China in the last century, plundering a great number of valuable cultural treasures in our country's Old Summer Palace, and its Chinese treasure-class cultural relics of the twelve zodiac animal heads were lost overseas during this time. Christie's of France auctioned off my country's rat and bunny heads in 2009 for a total of almost 200 million yuan. This incident brought the beast head of Yuanmingyuan into the field of vision of the international community, and for a time there was an overwhelming amount of discussion about it. In this article, the author will use the thoughts triggered by this case to examine in depth the relevant private international law issues relating to the retrieval of cultural relics lost abroad, in order to raise public awareness about cultural relic protection and alleviate pressure during the recourse process.

2. Overview of lost cultural relics

2.1. The concept of cultural relics

Regarding cultural relics, there is no official theoretical definition. Many scholars define it as cultural heritage or cultural property. The Convention for the Protection of the World Cultural Heritage and Natural Heritage adopted by the 17th session of the UNESCO General Conference clearly stipulates that "cultural heritage" is: "Cultural relics: buildings of outstanding universal value from a historical, artistic or scientific point of view, Stele carvings and stele paintings, archaeological elements or structures, inscriptions, caves

and unions ^[1].”

2.1.1. Definition of Lost Cultural Relics

Nowadays, some countries do not recognize that the cultural relics they own are lost by other countries due to political or war reasons. There is no clear international convention to restrict this situation. Normally, only countries with lost cultural relics and countries with resources of cultural relics use the term lost cultural relics. For example, Zhang Yongnian of China's Social and Cultural Development Foundation has expressed his personal views on this matter. He said: “The loss of cultural relics can also be interpreted as the long period after the Opium War until the founding of the People's Republic of China. The loss of Chinese cultural relics overseas due to looting and other reasons that violated justice and the law.”

2.1.2. Existing relevant legal protection

At this stage, several conventions that many countries have unanimously endorsed have been formulated and passed on an international scale. There are three main positive effects:

The 1954 Convention was developed by UNESCO, China joined the convention in 2000. The convention played a guiding role in the initial stage of the international recourse process. The convention stipulates that if a violent war occurs between the contracting states, it can be applied. The contracting states must begin to take all measures to protect cultural resources when a war breaks out, and prevent and confront any damage to cultural resources caused by any means.

The 1970 convention appeared in the eyes of the international community in Paris, China acceded to the convention in 1989. The convention can be applied when there are cases in which the parties involved in the illegal entry and exit of cultural relics and the ownership of cultural relics have been replaced by illegal means ^[2]. The implementation of this convention has produced significant effects in preventing precious cultural relics from being transferred abroad by illegal means.

The 1995 Convention was born in Italy. In 1997, China became a party to the convention. The focus of this convention is to solve the problem of returning lost cultural relics to countries that have lost resources, and to provide them with systematic and practical procedures with strong operability.

2.2. Problems in the process of recovering lost cultural relics in my country

2.2.1. Relevant laws and regulations are not systematic

On one hand, China's laws do not have a clear classification of cultural relics, making it hard for us to assess the significance directly. Since there is no clear foundation for division in the precise execution methods, law enforcement officials are unable to make right judgements instantly. The persistent difficulty of execution has also become a significant impediment to the perfection of relevant national laws. This is quite clear in terms of cultural relics export. In China, cultural relics are exported in a hierarchical structure, but there is no defined grading criterion. It is difficult to make a clear judgement in the face of many real-life conditions, which makes determining whether the exported cultural artefacts are unlawful even more difficult.

On the other hand, the recourse procedure does not have a mechanism for relevant cooperation. In the process of retrieving cultural relics, China has not established a complete information data system. Incomplete records of the movement or transaction of cultural relics, and the inability to retrieve the basic information and existence status of the cultural relics in a timely and accurate manner, are a great obstacle to recourse ^[3].

2.2.2. Failure to maximize the use of international conventions

International conventions have also played a significant influence in the retrieval of cultural relics. Despite

the fact that China has ratified a number of international conventions, they have not yet reached a sufficiently comprehensive level. However, if my nation is able to utilize it legitimately and within an acceptable range, it may be really beneficial to recourse. What's more depressing is that my country's internal laws diverge from relevant international rules and regulations, and the precise applicable legislation for retrieving cultural relics are blank. This is the main source of issues in practical applications. As a result, the associated supporting systems are unable to work together effectively throughout the actual operating process.

2.2.3. There is a lack of law enforcement in the specific practice of cultural relics protection

The level of law enforcement in the protection of cultural relics did not meet the relevant requirements, and the illegal act of smuggling of cultural relics failed to be contained in a timely manner ^[4]. In the last century, the main reasons for the large-scale loss of cultural relics in China includes the large number of cultural relics in various aspects in our country, and strict requirements on related protection forces, however, according to the actual situation of our country, the requirement is not met. China has a vast territory, scattered cultural relics, and most of them are distributed in remote places due to historical factors, which has brought great problems for the effective development of cultural relics protection.

At this stage, although China has negotiated and signed relevant documents on the protection and mutual assistance of cultural relics with relevant departments in some developed countries ^[5]. However, due to the relatively low level of ties between China and other countries, it has not been able to learn effective, practical and reasonable valuable experience from other countries that have lost resources of cultural relics, such as Egypt, Ethiopia, and India, and cannot obtain relevant support and help in this process.

2.3. Experiences of successful foreign pursuits and their enlightenment to our country

2.3.1. Experience of successful recourse in foreign countries

At the end of the last century, the Barakat Art Museum in the United Kingdom acquired a number of very old cultural relics from some European countries for a fee. After investigation, the Iranian government claimed that the batch of cultural relics had been lost from its territory and requested the return of the cultural relics, but was rejected. Iran filed a lawsuit in a British court in response to this scenario ^[6]. The case's major point is to reaffirm the rights of cultural relics, and it comes to a finish with Iran's triumph in the lawsuit. During the case's trial, the judge might determine that the country owns the cultural treasures based on applicable Iranian laws, according to extended interpretation. Iran's domestic legislation served as the legal foundation for this international lawsuit, which resulted in the successful recovery of the cultural relics.

2.3.2. The enlightenment of foreign successful retrieving experience to our country

Cultural relics have always acted as messengers for the cultural development and dissemination of countries, nations, and tribes because of their own cultural nature, and even embodies their own value in political and diplomatic, economic and trade, social and cultural aspects ^[7]. With the gradual and rapid economic development today, people in various countries have increased their awareness of cultural relics protection, and their legal capabilities and levels have also been further strengthened. In order to get rid of the dilemma of recourse for lost cultural relics, fill in the gaps in relevant laws, and improve relevant legislation, the Chinese government should be aware that it must exert its due strength in all aspects such as economy, culture, politics and diplomacy, social and humanities, etc., so that China can develop practical, efficient and convenient recourse methods, promote the process of retrieving cultural relics, to contribute to the historical monument of protecting precious cultural relics and resources in our country.

2.4. Solutions to break through the dilemma of recourse

2.4.1. Improving the relevant legislation on the protection of domestic cultural property

Our country currently implements a grading system for cultural property, which is divided into precious and general cultural properties. Among them, precious cultural properties can be divided into first, second and third-class cultural relics ^[8]. The grading system of cultural property directly affects the implementation of my country's cultural relics protection regulations and criminal law. Although the Ministry of Culture has formulated the "Criteria for the Classification of Cultural Relics Collections," there is still a long way to go before this standard is clear. Therefore, it is necessary for our country's cultural property workers and scientific researchers to continue their efforts to issue clear and clear grading standards that can cooperate with the protection of cultural relics and the criminal law as soon as possible.

2.4.2. Establish a specialized department responsible for retrieving lost cultural relics

Faced with the problem of the low success rate of retrieving, the Chinese government should establish a functional department specifically responsible for the retrieving of lost cultural relics. The state and government should grant the authority to the department so that it can have the qualifications and ability to negotiate on behalf of the country when communicating with foreign parties ^[9]. In the process of internal recourse, the department should have a certain degree of decision-making power on recourse channels and methods, and the right to perfect and choose recourse systems and systems. Under this circumstance, the department shoulders the burden of retrieving lost cultural relics in domestic and foreign situations, so as to better promote the process of retrieving cultural relics, confirming rights, and returning to the country where resources have been lost.

In the past ten years, the Chinese government has continuously established several funds related to cultural relics, but there are no funds specifically used to repurchase lost cultural relics. The establishment of a special cultural relics recovery fund organization can raise funds from the society and provide policy support from the government, which can provide a strong guarantee for the repurchase of lost cultural relics. This kind of action provides a new way to track lost cultural relics. While protecting my country's cultural relics resources, it will not hinder the long-term and stable development of the society and economy. To a certain extent, it can also be used to provide cultural relics overseas for my country's needs. Provide financial support for various litigation to determine sovereignty ^[10].

2.4.3. Give full play to the forces of all parties in the practice of cultural relics protection

Retrieving the cultural relics lost overseas requires the greatest use of the strength of the government and national leaders in all aspects. As a witness to the splendid Chinese traditional culture, cultural relics play an important role that cannot be ignored in enhancing national self-confidence and cohesion ^[11]. Therefore, in the process of recourse, for some national treasure-level cultural relics, senior leaders of the Chinese government can come forward to negotiate with other countries. It is hoped that they will realize the importance of cultural relics to our country and return the lost cultural relics for the purpose of the friendly relationship between the two countries.

3. Concluding remarks

The Chinese people have been devastated by the historical facts of the loss of valuable cultural relics in large quantities due to several wars in the last century. At the same time, the government and people should assist in the recovery of lost cultural relics in other countries. The applicable recourse laws and cultural relics protection systems, whether international or domestic, are in their infancy and should be continuously updated and improved in light of the current situation. It is not an easy effort to recover lost cultural relics and return them to countries that have lost resources. However, as public awareness of the need of protecting

cultural relics increases, my country's overall national strength grows, and many countries across the world collaborate. We predict a new stage in the process of retrieving cultural relics as soon as possible, thanks to the pooling of efforts from all parties.

Disclosure statement

The author declares no conflict of interest.

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