

## ON THE LEGAL PROTECTION OF CULTURAL, NATURAL AND INTANGIBLE HERITAGE IN CHINA

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**Abstract.** *With a long, splendid and unique cultural history, China is extremely rich with cultural heritage. The enormous variety and the tremendous amount of cultural heritage are the priceless treasures not only of Chinese people, but also of humanity as a whole. This article provides an in-depth examination of the current Chinese legal regime for heritage protection. Therefore, mainly based on data like historical documents, academic researches, government laws and regulations documents, this paper attempts to study the historical evolution of the notion of “heritage” and the cultural, natural and intangible heritage legal protection in the contemporary China (after 1949). The article argues that even though China has significantly improved and reformed its domestic law there are still shortcomings in the implementation of the international instruments that it has concluded or acceded to.*

**Keywords:** *China, legal protection; cultural heritage; natural heritage, intangible heritage.*

### **Introduction: the concept of "heritage" in China and in the West**

Etymologically, the notion of heritage, in its original sense, refers to the individual sphere as “individual property bequeathed by dead ancestors”. This meaning has been extended to collective, community, national, and even global patrimony. In the Western context, two processes have seen an expansion of the notion of heritage and its scope: one operates “from private to public” (Peng, Ge, 2009), another of the sole protection of “historic monuments” to historic buildings and districts, or from cultural and natural heritage to cultural landscape, but also from material goods to intangible “objects” (Zhang, 2014).

In China, the term “yichan” was first spotted in the Book of Later Han written by the historian Fanye (398-445). It meant “the property left

by the dead". The original concept of "heritage" (yichan) therefore reflects a relationship of succession, that is to say, the property and rights inherited from ancestors. In this regard, it emphasizes the materiality of bequeathed goods (Chang, 1999). In China, it is only in modern times that its meaning extended from the material sphere to the "cultural" and the intangible (Zhang, 2014). The concept of "cultural heritage" (wenhua yichan) appears in 1985 when China acceded to the Convention Concerning the Protection of Cultural and Natural Heritage. In the version of the "Great Chinese Dictionary in 1990, the term "cultural heritage" (wenhua yichan) is defined as "*the sum of the spiritual wealth left by mankind throughout history*". However, the word most used in official and legal documents is the word wenwu (in English, cultural relics) (Zhang, 2009).

As for the protection of "heritage", it depends on the definition given to this term (Zhang, 2011), so that the meaning of heritage informs the legislation on its protection (Li, 2015).

### **Contemporary China (after 1949): Building the legal system for the protection of "cultural heritage"**

The history of contemporary China has 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 was a long way to go towards accomplishing the task of building a modern legal system for the protection of cultural heritage. On the one hand, a relatively systematic legal regime for cultural heritage protection has gradually taken shape whose significance cannot be overestimated (Huo, 2013).

#### **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.<sup>6</sup>

In addition to joining multilateral conventions of heritage protection, China has sought to sign bilateral agreements with foreign countries. By the end of February 2023, China has signed bilateral agreements on the protection of cultural property from theft, illegal excavation and illicit traffic with more than 40 countries.

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. As long as major market nations refuse to ratify the 1995 Convention 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.

### **Chinese domestic law**

In 1950, the Administrative Council of the Central People's Government issued the new China's first decree on the protection of "cultural relics" (wenwu), the *"Provisional Law on the Prohibition of the Export of Precious Objects and Works"*. The same year, the Council issues the ordinance on the collection of "cultural property of revolutions" (Geming wenwu): the property of revolutions focuses on the archives and materials of new democratic revolutions.

Then, in the documents for the protection of "cultural relics" (wenwu) from the Board of Directors of the Ministry of Culture, new "heritage" notions are invented such as the "sites of revolutions" (geming yizhi), "relics monuments" (geming yiji), "cultural relics of revolutions" (geming wenwu yiji), "historical relics of revolutions" (geming shiji), "revolutionary architectures" (geming jinian jianzhu), "revolutionary monuments" (geming jinian jianzhuwu) etc.

The invention of the concept of "cultural property of revolutions" shows that the Chinese government does not only want to value the protection of property from antiquity, but also property belonging to the

more recent past, a provision that opens a new era for the protection of cultural heritage in China (Li, 2008).

During the 1960s and 1970s, the ideas associated with the formulas “*world heritage*” (shijie yichan), “*cultural heritage*” (wenhua yichan), “*natural heritage*” (ziran yichan) were widely disseminated throughout the world with the birth of the Convention on the Protection of the World Cultural and Natural Heritage. China's accession to this convention in 1985 encouraged the infusion of the notion and ideas associated with “heritage” within Chinese society.

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 People’s Republic of China on the Protection of Cultural Heritage** and the **Criminal Code of the PRC (Criminal Code)** are most relevant.

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.

The 1982 Constitution of the People’s Republic of China states that “*the state protects outstanding historical sites (mingsheng guji), cultural relics (wenwu) and other important cultural historical heritages*”. As a result, in 1982 China enacted the **Law of the People’s Republic of China on the Protection of Cultural Heritage** thus attributing to the “wenwu” a point value of historical, scientific and artistic view insofar as it integrates:

- 1) ancient cultural sites, ancient tombs, ancient architecture, caves, temples, sculptures;
- 2) sites, material objects, typical buildings linked to important events, revolutionary movements and personalities in modern and contemporary history;
- 3) valuable artistic works and handicrafts from different historical periods;

4) Documents, manuscripts, and books of historical, artistic or scientific value;

5) typical material objects reflecting the systems of production and social life of various ethnic groups at different historical periods.

This Law is the most significant applicable national statute and it is still effective at present after substantial amendments, assuming a prominent role in cultural heritage protection in China.

Though relatively simplistic and rather conservative judging by today's standard, the Law on the Protection of Cultural Heritage 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).

Generally speaking, the enactment of the Law on the Protection of Cultural Heritage 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. The most significant Amendment to the Law is the one from 2002, which 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.

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’. Fourth, and more strikingly, the 2002 Amendment partially legalizes 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).

A significant step forward was the publication, in 2005 of the “*State Council Circular on Strengthening the Protection of Cultural Heritage*”. It is the first document that gives an official interpretation of the term “cultural heritage” in the Chinese context: “*cultural heritage includes tangible and intangible cultural heritage*”. And the material cultural heritage concerns the “wenwu” having historical, artistic and scientific values as follows:

- *immovable cultural heritage* (ancient cultural sites, ancient tombs, ancient architecture, caves, temples, sculptures, murals, important relics and typical architecture of the modern and contemporary eras);
- *movable cultural heritage* (material objects, artistic works, documents, manuscripts, books from different historical periods);
- *famous cities of culture and history* (Lishi wenhua mingcheng) (streets, districts, villages, towns with outstanding universal value from the point of view of the style and distribution of architectures, or the integration between architectures and the environment).

The scope of the material “cultural heritage” set out above has been widened compared to the *Law on the Protection of Cultural Heritage*, by including cities famous for culture and history (streets, neighborhoods, villages). Compared to the term wenwu, the notion of “cultural heritage” is expanding. With the improvement of knowledge on the contents and values associated with cultural heritage, the meaning of the latter has become broader and deeper: “heritage” is then considered as a strategic resource (Cao, 2006).

**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).

Since the 1980s, China has entered a radical 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.

### **Extension to “nature”: the question of “natural heritage”**

The emergence of “natural heritage” (Ziran yichan) is relatively late in the Chinese legal context. From the available documentation, the interpretations on “natural heritage” have all been inspired by Article 2 of the World Heritage Convention: “*For the purposes of this Convention, the following are considered as “natural heritage”:* 1) *natural monuments consisting of physical and biological formations or groups of such formations which are of outstanding universal value from the aesthetic or scientific point of view;* 2) *geological and physiographic formations and strictly demarcated areas constituting the habitat of endangered animal and plant species, which are of outstanding universal value from the point of view of science or conservation;* 3) *natural sites or strictly demarcated natural areas, which are of outstanding universal value from the point of view of science, conservation or natural beauty*[17]

The notion of “natural heritage” set out above is limited to a specific geographical area (Huang et al. 2006): it is a narrow definition. In Chinese context, the word “natural” is associated with the idea of something that would exist “without human intervention”. Therefore, “natural heritage” in addition to the types listed in the World Heritage Convention also includes fauna and flora species, wetlands, geological relics, and biological fossils (Huang et al., 2006).

In China, laws and regulations to protect “natural heritage” are guided by different frameworks such as the “*Constitution of the People’s Republic of China*” (1982), the “*Environmental Protection Law of the People’s Republic of China*” (1989), “*Regulations on Nature Reserves of the People’s Republic of China*” (1994), “*Regulations on Scenic and Historical Interest Area*” (2006), etc. But there is no precise definition of “natural heritage” in legal documents, which only include the formulas “natural resources” (ziran ziyuan) and “natural landscapes” (ziran jingguan). In fact, “natural heritage” belongs to both “natural resources” and “cultural landscapes”. In a way, the emergence of the concept of “cultural landscape” (wenhua jingguan) crosses the notion of “natural heritage” and that of “cultural heritage” (Fan, Fan, 2008). As a result, part of the “natural heritage” is covered by the perimeter deployed by the Chinese wenwu.

Due to the multiplicity of administrative management of “natural heritage” in China, there is not yet an official definition of “natural heritage”: most actors have adopted the original definition of the World Heritage Convention. The most official document that used the term “natural heritage” was in the “Circular of the Council of Affairs of State concerning the strengthening of the protection of cultural heritage” in 2005: “*departments relating to the Council of Affairs of State should effectively take measures to solve the problems concerning the natural heritage, and strengthen its protection*”. According to X. Li (2006), this is the first time that the State Council has linked natural heritage to cultural heritage, strengthening the relationship between the two, asking to place them in equal status and strengthen their protection.

#### **Extension to “intangible heritage”**

In the notion of “cultural heritage”, the term “intangible cultural heritage” (feiwuzhi wenhua yichan) appears relatively late. In 1982, UNESCO set up the category “non-physical heritage (intangible heritage)” but until the beginning of the 21st century, it was rarely used



in China where it did not arouse any particular interest. It was during China's active participation in inscribing "masterpieces" on UNESCO's first list of oral and intangible heritage of humanity in 2001 that government authorities, academic institutions and associations have organized a series of actions in favor of intangible cultural heritage, and have thus allowed this notion to be gradually known to the public.

The formula "intangible cultural heritage" has in fact gradually attracted the attention of the Chinese (Wang, 2006). While in 2003, UNESCO adopted the "Convention for the Safeguarding of the Intangible Cultural Heritage", the formula "intangible cultural heritage" is now integrated in China by going beyond the notion of wenwu. While the "Circular of 2005" mentioned above already points to the existence of an "intangible cultural heritage", the *Law on the safeguarding of the intangible cultural heritage of China* of 2011 reinforces the legitimization of this notion. This refers to "various traditional cultural manifestations transmitted by people of all ethnic backgrounds from generation to generation and identified as a constituent part of their cultural heritage, as well as material and local objects related to traditional cultural manifestations including (1) literature traditional oral and the language that conveys it; (2) traditional fine arts, calligraphy, music, dance, theatre, folk and acrobatic art; (3) traditional art, medicine and "calendar"; (4) rituals, traditional festivals and other customs of the people; (5) traditional sports and entertainment and (6) other intangible cultural heritage".

If we then consider wenwu as tangible cultural heritage, the "Law on the Protection of "Cultural Relics" (wenwu)" and the "Law on the Safeguarding of Intangible Cultural Heritage" have made it possible to constitute a complete legal system in about the protection of cultural heritage in China.

### **Conclusion:**

China is today the first country by the number of sites inscribed on the UNESCO World Heritage List, and it is extremely active in the field of cultural heritage protection. 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, there was a long way to go towards accomplishing the task of building a modern legal system for the protection of cultural heritage. On the one hand, a relatively systematic legal regime for cultural heritage protection has gradually taken shape, whose significance cannot be overestimated. The evolution of the protection of “heritage” in China marks the transition from the sole protection of wenwu (cultural relics) to that of all the “cultural”, “natural”, and “intangible” dimensions. However, despite improvements in the laws, there are still shortcomings in the implementation of the international instruments that China has concluded or acceded to. This is not only a domestic duty, but also an international commitment.

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